

Mr. Furfaro: Thank you for being here today Mr. Mackler. And Mr. Mackler I'm making reference to July 6<sup>th</sup> correspondence directed to Chairman Asing and myself as the Planning Committee Chair on Bill 2361, and if you could give us an overview of this I would appreciate it.

GARY MACKLER: I would be happy to do that. This communication was prepared in response to a memorandum that we received from Council and it involved a number of issues concerning the Kukui'ula Workforce Housing Development. I think what I'll do is run through it in the order in which the inquiries were proposed to us.

Mr. Furfaro: Please go right ahead.

Mr. Mackler: And if there are questions along the way, please go ahead and please ask me your questions. Did you want to ask a question?

TIM BYNUM: I just saw this a few minutes ago. Are the questions included? Can you share the questions before you share the answers? I didn't see that the questions were included.

Mr. Mackler: I did not include the questions that came over in the memorandum.

Mr. Furfaro: Those questions came from the previous meeting that I have and they were directed from my Committee and in the spirit of not having a serial communication, I will see if I can get my memorandum copied.

Mr. Bynum: That would be helpful.

Mr. Furfaro: Could we do that Peter? While we are waiting for that, I'm going to ask if the Members don't mind to let Gary attempt to answer some of the particulars that were in those seven questions.

Mr. Mackler: Okay starting with the first question, it relates to constructing the development in increments. It's mentioned in the memorandum that increments could be built in size of twenty-five units per increment. I think I may have mentioned at the last Committee meeting where we discussed this matter that the affordable housing agreement that the County currently has in place with Kukui'ula Development Company does require that the development be built incrementally. Although it is not specific as to the size of each of the increments, that is yet to be defined. We responded to the inquiry to say that we support incremental development. Twenty-five units per increment is reasonable but we would also consider looking at language for our affordable housing agreement that allowed both Kukui'ula and the County Housing Agency to look at increments whether they would be larger or smaller depending on the market demand at the time of construction. What we would also like to see related to incremental development is that there be a timetable established for when each increment would be delivered for an offer for sale to the affordable groups of Workforce Housing Employees. We mentioned in our communication that we would like to see each new increment started within two years from the completion of the restricted marketing period for the preceding increment.

Mr. Furfaro: So Mr. Mackler, we are saying that you would feel comfortable for the agency to work with the developer on the mix number and so forth I guess depending on market conditions. But you would like to see when each phase is ended within a two year or twenty-four month period so we will go into the next phase?

Mr. Mackler: That's correct. We would like to have a provision that speaks to the delivery of the units and can also set reasonable lease sized increments. We don't want to see a situation where two or four units would cost a (inadmissible) increments, so we want to have a reasonable delivery of those units that can be provided to the workforce as the demand presents itself. I also want to say that we support the incremental development because what it really does is it enhances the probability that the units will be absorbed when they are made available and by doing it incrementally there is a potential to assist more employees that will come along as the project development evolves. So we see it as an advantage to this project to have this kind of process in place.

Mr. Furfaro: Okay. Let's see if there are any questions on that first item? I guess we could go to our next communication.

Mr. Mackler: Let me just also before I leave that item. There was one other inquiry about the unit mix that would be offered within each increment and we would want to see a mix of units offered within each increment and each income group to the greatest extent possible. I can tell you that in past discussions our office has had with Kukui'ula representatives, we have been in agreement to provide a unit mix to each income groups. There are three major classes of income groups in the ordinance and as noted in the communication from us, it is eighty to a hundred and ten percent, a hundred eleven to a hundred and forty percent and a hundred forty one to a hundred and eighty percent, so we want to serve all three of those groups with a mix of units to the extent that we can.

Mr. Furfaro: So the phase type and the phase market is what we want to achieve in each of those phases?

Mr. Mackler: Yes to the extent that we can do.

Mr. Furfaro: Okay. I'm sorry, go ahead Chair...

KAIPO ASING: Can you clarify the phase portion? What I'm making reference to is that you have the eighty to one ten and one eleven to one forty and one forty-one to one eighty. The number in each...

Mr. Mackler: Okay. The ordinance has a provision which states that twenty five units will be made available to each of those three groups that I just mentioned.

Mr. Asing: Okay, so that's in item two? Am I correct? Does item two address that? Is that what item two is intended to address or am I not correct?

Mr. Mackler: Item two is actually on a slightly different subject.

Mr. Asing: Little different?

Mr. Mackler: Yeah.

Mr. Asing: Okay.

Mr. Mackler: But we want to not alter what the ordinance says with respect to there being twenty- five units to be made available within each of the three income groups.

Mr. Asing:

Thank you.

Mr. Mackler:

The second inquiry has to do with the restricted marketing timetable that would be used as a project. We have had several discussions with representatives of Kukui'ula Development Company concerning this matter. What is in the ordinance presently is a requirement that units be offered to first time home buyers who are project employees and Kaua'i employees within twelve months. The next level of offering after that twelve month period is to any Kaua'i employee without the requirement of first time home ownership. That is what the ordinance states at this time. We would like to see twelve months of restricted marketing offered to the first time home buyers who are both project employees and Kaua'i employees. We indicated in our letter that we would find it acceptable if the marketing process starts four months prior to the issuance of the certificate of occupancy for each of the phases. We do allow and have allowed in the past developers to begin their marketing before the development is complete. We don't really want to see it start too far in advance because people generally want to see what's there and take a look at what they might be able to buy and see the place. We would find it acceptable if the marketing began four months prior to the certificate of occupancy and continued after that for a period of eight months.

Mr. Furfaro:

And Gary at that point, are we guessing within some reasonable accuracy the certificate of occupancy is issued typically when the roof goes on? I mean it's anticipated what happens once the doors go on...

Mr. Mackler:

What I would say to that is we would ask for Kukui'ula's development schedule with their contractor to see when their target completion date is and try to approximate as closely as possible, what four months looks like before they complete the project. I think it's not entirely precise but I think we can get fairly close to the target.

Mr. Furfaro:

So we would send them a notice as to when we felt that we were in that four month range?

Mr. Mackler:

Yes we would because we want to have something and I'm sure they want to have something as well to say that this is when the clock officially starts to run.

Mr. Furfaro:

Okay. Are there any questions on item two? Okay I guess we can go on to item three.

Mr. Mackler:

Okay. The next inquiry has to do with the concept of shared appreciation. Shared appreciation is a restricted covenant; it works in concert with a buyback restriction. The way shared appreciation works is during a period of affordability, well during a restricted period let's say for the sake of discussion twenty-five years. If the homeowner wants to sell or transfer their unit during that restricted period, they would first have to offer it back typically to the County. If the option to buy back the unit is declined by the County the home owner has twelve months to try to sell the unit on the open market and essentially it becomes a market sale at that point in time. If the unit is sold within that twelve month period there is what's called the shared appreciation program which allocates a portion of the net appreciation between the home owner and the County. Hopefully we won't see units that reach the point of triggering shared appreciation, we would like to think that we'll be able to buy back the affordable units and resell them to a new family that can afford the unit. We can't guarantee that in all cases that it will at all happen so this is another anti-speculative restrictive covenant that can be used for this project. We think it's a good idea to have for this project because it will ensure that those

who purchase these units are looking at long term ten years as opposed to short term ten year. In the memorandum from Council, it inquired as to a formula of using four percent per year as a rate of return for the home buyer if the buy back is declined and they are able to sell the unit as a market unit. This is different from the formula we have used in the past, in the County's shared appreciation program. However we have analyzed our program and we've analyzed this formula and what we've done was provided with this communication an attachment. This page here is called shared appreciation and what it does is it gives you a comparative picture of how the formulas work, of how the county's formula works and how a four percent formula would work for a homeowner who's owned a unit for three years. Basically what you'll find is that the opportunity for short term ownership and windfall profits is substantially smaller for the home owner using a four percent per year rate of return as compared with the way our shared appreciation program has been used in the past. So we feel that using a four percent formula would reward long term ownership and give homeowners an opportunity at the end of the restricted period, the twenty five year restricted period to...

TIM BYNUM: A hundred percent...

Mr. Mackler: That's what it would be at the end of the twenty five years. That's correct.

Mr. Furfaro: Actually this is the habitat model. Habitat for Humanity uses a four percent equity over a twenty-five year period so that the owner has an opportunity to earn some wealth along the line regardless of their circumstances that might change. Is that what you have for item three?

Mr. Mackler: That really it I think we wanted to illustrate the two formulas side by side and we wanted to inform the Council that we would support the four percent rate of return.

Mr. Furfaro: So for someone who has purchased the facility, purchase the house and at the end of ten years for whatever circumstances they would have the forty percent of equity in the shared profit and the balance would return to the housing office and into the revolving fund?

Mr. Mackler: Correct. If the unit was not repurchased and it was sold on the market, they would realize a forty percent return.

Mr. Furfaro: Which is substantially less of a profit that they would realize than our current policy?

Mr. Mackler: That's correct.

Mr. Furfaro: So there's no quick profit?

Mr. Mackler: Not at all. This would discourage somebody who might consider buying a unit thinking that they can within a short term period of time flip the unit and realize a windfall profit.

Mr. Furfaro: Okay any questions from members on item three?  
Lani...

LANI KAWAHARA: Shared appreciation...

Mr. Furfaro: Item three yes.

Ms. Kawahara: Okay. So the unit is owned for three years in this example and they want to sell it. The end result with a four percent per year formula means the County gets a hundred and seventy six thousand dollars and the purchaser gets twenty six thousand?

Mr. Furfaro: If the shared appreciation is after three years the unit sells for fifty thousand dollars more than they purchased they get twelve percent of the fifty thousand and the County goes back into the County's revolving fund the eighty eight percent.

Ms. Kawahara: And the twelve percent is four percent times three years?

Mr. Mackler: Yes it is. So looking at the assumptions that we made for this example, we're looking at an assumption that there's a two hundred thousand dollars of net appreciation. After three years the home owner would be entitled to twelve percent of that.

Ms. Kawahara: Okay so they would get twenty four thousand and we would get a hundred and seventy six to go into...

Mr. Mackler: Correct. And when you compare that with our current formula you can see that it's significantly different.

Ms. Kawahara: Yes. Okay great thank you.

Mr. Mackler: Okay.

Mr. Furfaro: Any more questions on item three?

KAIPO ASING: I have a question on your example that you're using. What has the fair market value to do with this?

Mr. Mackler: Well the reason that is shown is under the County's shared appreciation program, the percentages are set at the time of the original purchase. What provides the basis for the numbers to determine net appreciation later on is what the original fair market value of the unit was at the time of the purchase, and what the fair market value is at the re-sale. So for example if we looked at a property that had an original fair market value and this is determined by an appraisal of four hundred thousand dollars at the time of purchase and it was affordably priced at three hundred thousand dollars it would, there's a computation that we show where we subtracted three hundred thousand dollars from four hundred thousand dollars to give us a hundred thousand dollars which is then divided by the original fair market value which gives us a twenty-five percent share. That twenty-five percent share is what is used at the end at the time of the sale of the unit where there's another fair market appraisal taken. Our calculation would be based on the fair market value at resale which is five hundred thousand dollars. We would subtract the original affordable purchase price which was three hundred thousand dollars to determine the net appreciation. We would then be entitled to twenty five-percent of that and the home owner would be entitled to seventy- five percent. It's a much different process in determining the allocation than a straight forward simple four percent per year formula.

Mr. Asing: Yeah that wasn't my point. My point was, I just thought that whatever you bought the property for, that's the dollar number. Whatever you're going to sell it for that's the number and not take into consideration the appraisal. What has the appraisal to do with it is what I'm saying. If I buy it for five hundred thousand then that's what it is.

Mr. Mackler: This is, all I can tell you is this is the way it's been done in the past and I haven't personally had much experience with the shared appreciation restricted covenant because I think the last time it was actually used by our County it was with 'Ele'ele Nani Phase II Project which preceded me. This formula was extracted from our shared appreciation program and it seems like it's a little more confusing than it should be. As I have stated, we have no problem supporting a four percent formula.

Mr. Furfaro: Okay, anymore questions on that item? If not Gary we can move to the next point.

Mr. Mackler: Okay this is item number four in your memorandum. This has to do with what's referred to as a profit sharing agreement with Kukui'ula, with regards to units that are not sold pursuant to the marketing time table. This would be the restricted marketing period and what the housing agency considers a shared profit of twenty-five percent of the equity. This is a concept that we've not had in place previously. In our response to this question we first noted that the ordinance as written does not permit market sales at this time. The ordinance essentially says, you have twelve months to market to first time home buyers and after that twelve months you can market to any Kaua'i employee between eighty to a hundred an eighty percent and that's all it says. If Council were to amend the ordinance to permit Kukui'ula to, at some point reach the market sales through after a restricted marketing period. We like the idea that there would be some percentage of the profit that might be realized through the market sale to come back to the County. We have historically with affordable housing projects, seeing where units are not absorbed or purchased by the affordable groups and units are ultimately lost as market sales, it is not uncommon. Halelani Villas is probably the best example I can give you on that where we saw more than fifty percent of the units there actually never reach the affordable purchasers; they ultimately went to the market for various reasons. Most recently at Hookena which was the last development built by D.R. Horton for Grove Farm's affordable housing condition, that was the fifty-six unit project and it was marketed in 2006. A much different market that we know we have today and not all of those units were sold to the affordable purchasers; there were approximately five or six units that floated up to the market. It's a realistic concern that we have about units going to market. If they do go market there's nothing there in that point in time for the County, so this concept if it were to be considered by Council would at least provide something there for the County if units actually went to market sale.

Mr. Furfaro: Okay, Mr. Bynum.

Mr. Bynum: But the law as currently written regarding Kukui'ula does not allow units to go to market?

Mr. Mackler: That is correct. In fact the agreement that we prepared with Kukui'ula after the 2004 zoning amendment was approved, essentially says that if they are unable to sell the units during this restricted marketing period they have to either rent those units or continue to market them for sale to Kaua'i employees who are between eighty and a hundred eighty percent of the median income.

Mr. Bynum: So they remain in the affordable inventory?

Mr. Mackler: They do, there is no provision in the ordinance presently that allows for the market sale.

Mr. Bynum: Thank you.

Mr. Furfaro: Any more questions on that item. You have a question, go right ahead.

Ms. Kawahara: Thank you. Just to make sure I have it. In the current agreement there is nothing that goes to market, allowed to go to market and stays in affordable housing inventory?

Mr. Mackler: Yes.

Ms. Kawahara: But what they are asking is to go to market?

Mr. Mackler: Yes.

Ms. Kawahara: Okay. And you didn't get to the twenty five fifty percent split yet?

Mr. Mackler: No.

Ms. Kawahara: Okay.

Mr. Mackler: If I can just make a comment.

Ms. Kawahara: That's a big difference yeah between going to the market and keeping inventory?

Mr. Mackler: In the past Housing exactions with private developers have allowed units to eventually be sold as market sales if they could not be sold to the affordable groups. I think the concept there is that the developers incur the cost to develop the project, construct the units, to market the units and at some point they need to have a way to move the units out as opposed to carrying units they cannot sell. That has been typically the way it's worked. In this ordinance it was not put in and that's what the ordinance says, as I described there is no market sale provision there at this time.

Ms. Kawahara: Okay, thank you.

Mr. Furfaro: So this proposes a market component here of which when it does and if it does sell, cash goes back into the revolving fund?

Mr. Mackler: Yes what we would do is set up a sub account in our Housing Community Development Revolving fund to receive any proceeds that may come from those sales.

Mr. Furfaro: Okay. Mr. Bynum, you have a question?

Mr. Bynum: Yeah the key thing in your comments was, if. If the Council chooses to change that, then you're suggesting but you're not recommending the Council change that?



Mr. Mackler: No, that is and we're leaving that to your discretion.

Mr. Furfaro: Just to make sure we clear the air here. The Maui ordinance was introduced by housing?

Mr. Mackler: Oh yes I did make mention of the, the only for reference purposes I mentioned that Maui's County ordinance does allow ultimately for market sales after restricted market bearing. As the County's Workforce Housing policy and they use a fifty percent split of any profit and they define the difference between the affordably priced unit, whatever that price was and what it ultimately sells for on the open market and that's how their ordinance is written.

Mr. Furfaro: Okay let's go to item five.

Mr. Mackler: Item five relates to request for I guess an inventory of affordable housing units in the Kōloa-Poīpū area. With our communication we've attached a table chart which provides that information to you. What has been built in the Kōloa-Poīpū areas are three rental projects, the Pa'anau Village Project which is sixty units. The Kawailehua Project next door which is State owned project which is fifty one units and there is also the Hale 'Ohana Project which is forty- eight units. This is a project in Kōloa that went through a rehab not too long ago and it's owned by a tax credit limited partner ownership. What's proposed is the second phase of the Pa'anau Village Project which is the fifty unit development and of course the Kukui'ula Employee Housing Project consisting of seventy five units. I have also noted the target group for each of those projects so you can get an indication of what income groups they serve.

Mr. Furfaro: Any questions? Thank you for that summary Gary...

Ms. Kawahara: I'm sorry I do.

Mr. Furfaro: Go ahead.

Ms. Kawahara: I noticed that the Kukui'ula Employee Housing Project target group is eighty to one hundred eighty yeah? And all the others are eighty below, sixty below, sixty below, and sixty below. Is that because these were Government projects that we were able to do more generously to the lower target group?

Mr. Mackler: Yes. For example and what governs that in many cases is the funding sources that are used for the developments. So for example if you look at Hale 'Ohana, that's a tax credit, a low income housing tax credit project. Pa'anau Village Phase II will be a low income housing tax credit project and the requirement of that program is that all tenants must be initially sixty percent or below when they occupy the unit so that is target for those programs. Pa'anau Village Phase I has home investment partnership program funds which has an eighty percent and below target. The State of Hawai'i has an extremely low income target requirement for Kawailehua so it is mainly governed by that. The Kukui'ula Project and the range of income for that project, I recall when there were deliberations over the affordable housing conditions for Kukui'ula that there was recognition of the fact that there are other affordable housing projects in the Kōloa area that are serving these lower income groups that are targeted to these groups and that there was a recognition that the workforce for the South Shore would range certainly higher than eighty percent of the median income. In many cases for those who may come to work for a Resort like this project is with above a hundred and forty percent up to a hundred and eighty percent mid management, upper management. So I think the

thinking then was to try to have an income range that would target a larger group of people that would need housing.

Ms. Kawahara: Okay. Since we are looking at this agreement currently, my understanding in conjunction with that are we have a hard time filling the new ones by Kintaro's that are eighty to one hundred eighty percent?

Mr. Mackler: That project is from sixty-five percent to one hundred and twenty percent and I understand that they were actually filling from the bottom up. Basically the ones that were from sixty-five to eighty percent filled up right away and then from eighty to a hundred have been filling up, so it's more the upper end.

Ms. Kawahara: Is harder to fill?

Mr. Mackler: Yes and it's also a sign of the market right now it's a very weak market for them.

Ms. Kawahara: So I need to ask, are we able to look at making that a lower percentage?

Mr. Mackler: For this development?

Ms. Kawahara: Yes since we're looking at agreements.

Mr. Mackler: Well at this point I would probably caution against doing that because I think the future years out that we may see a completely different market again and we may see that the demand is stronger for those that need housing in this range of income. I think that we basically look at the group that is eighty percent and below and trying to serve them primarily with rental housing. There are a few programs that will work for home ownership for families that are eighty percent and below. Kaua'i Habitat for Humanity being one of those, projects that are done by the Self Help Housing Cooperation, for example like the Puhi Self Help Project is another. To try to produce turnkey housing for sale for the group that is eighty percent and below is very difficult.

Ms. Kawahara: Turnkey meaning to own?

Mr. Mackler: Build the home, sell the home, and turn over the keys with the purchase.

Ms. Kawahara: So these are homes and not units like apartments?

Mr. Mackler: For the Kukui'ula Project?

Ms. Kawahara: Yeah.

Mr. Mackler: It's a combination.

Ms. Kawahara: It's a combination.

Mr. Mackler: Yes, it's a combination of multifamily and single family.

Ms. Kawahara: Okay I appreciate your answers. The rental housing is the one that I'm focusing on because I understand the importance of home ownership but for the people that can't own and need to rent, that's the target group I'm wondering about in relation to this agreement.

Mr. Mackler: Well the agreement allows for Kukui'ula to sell or rent the units. The probability I would say if there's a market for people to buy the units they will most likely want to sell the units to recover their subsidy for producing the units. The Pa'anau Village second phase is intended to serve this lower group of households, income group of households for this area. The project must be affordable for sixty-three years for the second phase of Pa'anau village, it will be there serving families that are at sixty percent and below for a long time.

Ms. Kawahara: Okay, so I see Pa'anau is fifty and Kukui'ula is seventy five? So I guess my question would be... are we expecting those rental housing needs to be met with fifty that we have with Pa'anau?

Mr. Mackler: Will it be enough?

Ms. Kawahara: Yeah. Is it ever? I can't say ever I'm sorry I wouldn't make you say ever but is it enough?

Mr. Mackler: We see such wild swings in our market here on Kaua'i and we see extremes but by and large the demand is very steady for housing needs of those who are sixty and below and eighty and below and it's primarily a rental market.

Ms. Kawahara: That stays steady?

Mr. Mackler: Yes and one of the advantages of producing that rental housing for that group is with the projects we are doing is that it keeps the rents stable. They are not subject to swings in the economy or in the market and they are predictably affordable rents that are there in perpetuity.

Ms. Kawahara: I'm going to ask and put you on the spot. Would it behoove us as a Council since we have Kukui'ula in front of us asking to change their agreement to somehow urge incentivize that they rent instead of sell the ones of those seventy-five?

Mr. Mackler: Well I think I would probably refer it to Kukui'ula to answer that question. My understanding is with housing exactions developers are typically looking to build units for sale because they can recover their cost. Trying to build privately financed rental units, the numbers really don't work here on Kaua'i well. We look at the projects that we're doing and we have to put in typically about eighty percent of financing that doesn't require a debt service. It takes deep subsidies because the rents that you can charge don't really generate a strong revenue stream to cover your operating expense and cover your debt service and sustain your project successfully for a long time into the future. It's very difficult to produce privately developed rental housing here.

Ms. Kawahara: For the developers?

Mr. Mackler: Yes, Yes. The numbers don't work.

Ms. Kawahara: Because of the cost recovery?

Mr. Mackler: That's correct.

Ms. Kawahara: Okay, I appreciate it. Thank you.

Mr. Furfaro: Gary as a follow up question I think the other piece here that we need to recognize is part of this policy is providing housing for their workforce and their workforce is made up of individual that could be a Nursery Superintendent, a Office Administrator or so forth. As a couple we would find not having this range and many of them would not qualify for the workforce housing that is intended for them to not cause a housing rush but to provide housing to their own workforce. As the same time as many of our programs right now, if you take any combination of like a school teacher with a spouse who is a police officer or so forth, they exceed the hundred and twenty range and therefore they're called for is what is left up as the gap, there's a gap there and there's no affordable housing really for them. This is proposed as an increment of housing so that they don't add to the current crises and they are providing housing for their own workforce which might fall in that range of a hundred and forty to a hundred and eighty of which currently there is a gap of income.

Mr. Mackler: Yes.

Mr. Furfaro: Would you concur with that?

Mr. Mackler: I would concur with that and I would also concur with the fact that historically we've been not able to serve the gap group. That has moved around a little bit but basically from eighty up to a hundred and twenty or up to a hundred and forty percent of median. That's been a very difficult target because going back to the rental projects most of the programs that we have available to finance those types of projects are for eighty percent and below so if you're over eighty percent you really can't participate in those rentals. It's just, the hardest place to serve our income groups here is really from the eighty up to a hundred and twenty or a hundred and forty percent of median.

Ms. Kawahara: For owning?

Mr. Mackler: For renting and for ownership as well.

Ms. Kawahara: Okay. Thank you.

Mr. Furfaro: So I just wanted to offer that Lani as part of the history in this range. We expect them to pay reasonable and livable wages to their people but at the same time those wages, if this was lower might have drove them out of the whole intent to mandate workforce housing for their own workforce.

Ms. Kawahara: Okay. My Next question will be about to Kukui'ula about the numbers. Thank you I appreciate because the gap thing is interesting.

Mr. Furfaro: Yeah I just wanted to share, that is the gap area one forty to one eighty.

Ms. Kawahara: Thank you.

Mr. Furfaro: Can we go to item six?

Mr. Mackler: Okay. This is actually a chart attached to our communication and we just prepared this. Actually we did this some time ago with the ninety year buy back restriction in mind. We wanted to run the numbers basically to get a snapshot of where somebody would be after thirty years of ownership which is the traditional length of a residential mortgage. What it would cost them to service that mortgage, pay their homeowner fees and if they were then to want to sell their unit under a buyback and at the thirtieth year how much they could get back in return. It's an interesting snapshot I think and essentially what they would have paid after thirty years is Seven hundred ninety two thousand dollars approximately. Using the buyback formula that we follow, they would receive five hundred and forty-nine thousand dollars if they would want to sell back the unit to the County. So in terms of does that make sense for the home owner? We wanted to get a better picture of what it really looks like and draw your own conclusions but it doesn't to us look like the best way to approach housing for a lot of families. I think at some point people want to be free and clear of restrictions whether it's twenty-five years or some other period of time. Eventually people do want to be free and clear of those restrictions and have those homes that they can really finally call their own.

Ms. Kawahara: The housing stuff is always really complex. When you're talking about thirty year buyback yeah, it is the same person that started at year one and ends up at year thirty?

Mr. Mackler: Correct.

Ms. Kawahara: It's not somebody that came in five and then ten?

Mr. Mackler: No we just looked at it for someone who owned a property for thirty years. We looked at the rate of return that is prescribed by formula in the buyback restriction and what they would receive at the thirtieth year if they were to sell back the unit.

Ms. Kawahara: Okay, thank you I appreciate your patience with the question.

Mr. Mackler: Okay so that's what that consists of and lastly we just although this wasn't really in response to the memorandum we did include one more response in our communication. Which or just to inform the Council that the Housing Agency is amenable to holding the first option to buyback units that are sold below one hundred and forty percent of median. We discussed at the last Committee Meeting on this matter, dividing the responsibility where Kukui'ula would be in the first position to buyback units that are one hundred and forty-one percent and above and that the County would take the first position for the units that were one hundred and forty percent and below. So we just wanted to confirm that to you. The ordinance as it's written today says that Kukui'ula will hold the first position to buyback all seventy-five units regardless of what income bracket they fall in. This was just to confirm for you that we would be amenable to sharing or dividing that responsibility.

Mr. Furfaro: Go right ahead Lani.

Ms. Kawahara: I had a question about this because it is interesting to take one forty and below and they'll take one forty-one and above. My question is who determines which units and how many numbers are sold are at one forty or below?

Mr. Mackler: The ordinance prescribes those twenty-five units, actually with the breakdown of a hundred and forty percent and below, and a hundred and

forty percent and above. It's twenty-five units from one hundred and forty-one to one hundred and eighty percent and it would be fifty units from one hundred and forty percent and below.

Ms. Kawahara: Okay, thank you.

Mr. Mackler: And that's as it's written now in the ordinance.

Mr. Furfaro: That's in the ordinance.

Ms. Kawahara: Okay, so one hundred forty to one eighty percent would be the ones that they would buy back and that would be forty units and the one forty and below was how many, thirty?

Mr. Mackler: Fifty units.

Ms. Kawahara: Fifty. Okay thank you.

Mr. Furfaro: You're fine?

Ms. Kawahara: Yes.

Mr. Furfaro: Okay. Is there anyone else on the table that has questions on that?

Ms. Kawahara: How many units instead of seventy-five?

Mr. Furfaro: Excuse me Gary. Break down for us one more time in the current ordinance of the seventy-five units, how many units not percentage but how many units are in the below one forty and how many units are one forty-one and above of the seventy-five?

Gary Mackler: Below one hundred forty percent of median there are fifty units required and above that number there are twenty-five units.

Ms. Kawahara: Okay, I had forty for some reason thank you. That makes seventy-five, thank you, and thank you.

Mr. Furfaro: So we want to retain the right to buy back up to fifty units in the one forty category?

Mr. Mackler: Yes.

Ms. Kawahara: And that's based on not market yeah, saying that there's no market?

Mr. Furfaro: That's in the... those percentages are that mix is in the ordinance.

Ms. Kawahara: Okay.

Mr. Furfaro: Gary since this is available and I don't know if there are other copies available but on that note and before we go any further, I'm going to ask as Committee Chair if there is anyone that would want to testify now on this memorandum as

it relates to the housing department's commentary and then I will call up the developer after that.

Mr. Mackler:

Thank you very much.

Mr. Furfaro:  
appreciate it.

You can stand by in the audience and I would

Mr. Mackler:

Will Do, okay.

Mr. Furfaro: Our meeting is still suspended for testimony and everybody has had an opportunity to hear the July 6<sup>th</sup> correspondence. I guess we might have a few copies of this. Is there anyone that would like to testify? Please come right up.

ANNE PUNOHU: Aloha my name is Anne Punohu and I'm here representing the Kaua'i Fair Housing Law Coalition. I was also one of the original people to be there to make sure that Kukui'ula because of its huge scope of its project will take care of the people here and make sure that the people have a place to live while they were working there that they can afford. I'm a very simple woman so I don't understand any of this stuff but according to what they have told me, my primary concerns are the bottom level employees. That would be the average person that's working there in the restaurant, in the golf course. There is not a lot of housing right now that people can afford and Kukui'ula has promised to pay a better wage to its workers and their thinking is that if they do that they can afford a nicer place to live. My concern when we were doing this originally was that I didn't like the percentages, I didn't know what they were and I had to learn and get educated on median income. To me median income of the most that people that need is thirty-forty percent. However I ask them, is this going to affect in any way incrementally? You're supposed to build those things first and we suppose to get those people into housing and they suppose to be able to have a place to live. That's my concern. Now they have told me that it will not affect that and they made that promise. They say that things are being built, they're going to build the units and the people will be able to afford it on the salaries that they're going to pay. Originally my concern is that I was hearing was that it was a lot of managerial and big guys with big money and that's why the percentages concerned me. As they have told me today, they have told me and promised that it wouldn't affect that so what I'm going to ask the Council to do is, Could you guys please ask Jeannie to come up and explain it in a little bit more simpler terms for people like me out in the general public so that we actually understand what's really going on. I didn't understand anything because I'm not that good at math so maybe if we can have her kind of clarify because anybody who is listening to this is not going to understand and will have a lot of questions. So that's kind of my statement so in general though if it's not going to affect and it's really going to help and it's going to take care of the lower end and it's going to take care of the workers I don't have a problem. I think we need to have it more clearly explained to people like me who aren't that Akamai. Thank you and Mahalo.

Mr. Furfaro: Anne Please... you know as Chairman of the Committee I'm going to touch up on a couple of your questions because they're good ones, and I'm going to reflect back on some of the items that are in the ordinance so that you can... The ordinance is about providing housing for workforce and thanks to Council woman Yukimura we have a second option on a piece of land in coordination with the DOE and that's in the ordinance. This piece dealing with their workforce basically says and I'm going to use some round examples here and I'm going to give you a schedule that shows these examples. Two-thirds of this project is directed at employees who earn one hundred and forty percent of the median income on the Island and below so that portion would cover basically a hundred percent of the median income for a family of four, right now it's sixty

thousand dollars, husband and wife working and so forth. You can find that on the chart and go backwards and it's intended at the two-thirds margin and that option to really provide some opportunity for people for home ownership.

Ms. Punohu:

Advancement.

Mr. Furfaro:

Right, and then thirty-three percent of it or twenty-five of the units are based on workforce first, people associated with the project, then people associated with the workforce on the Island of Kaua'i, to provide them an opportunity between a hundred and forty percent and one eighty of the average income on the Island to be able to qualify for housing. That's tied to the original ordinance that made reference to the type of wages we were expecting them to pay which is the question you brought up. The type of wages we were expecting them to pay for the people that would work in their organization, whether it's a starter in the golf shop, an accountant in the accounting department, and so forth and so there is this schedule. Once you get that schedule you can kind of see how much of the inventory is available there and the schedule also shows what it would be for a one bedroom, what it would be for a two bedroom, what it would be for a three bedroom. The housing department has the authority right now to kind of screen those and identify what units are fulfilling what part of that ordinance. So that schedule will help you a great deal. The big items that are here in front of us are this fact about the potential of building in increments so that we're not flooding the market at once for home ownership in this current economic challenge that we have. So to be able to build in increments and then if we identify those earning areas and the inventory is sold to the public of Kaua'i, there's a share of that profit that goes back into the Housing Department's revolving fund. That's the principal pieces and so I just wanted to share that with you and let you know that I will give you a copy of that schedule.

Ms. Punohu:

Can I say that I like the idea of incremental and I like the idea of money going back into a revolving fund for our County Housing Department and why I like that is because I'm hoping that with that money perhaps we can look at more housing at the thirty percent and forty percent level. That's why I think it's good on the incremental, anything that's does such a major development in increments to me is a good thing. So thank you for clarifying. I'm a simple woman so I need it cut and dry yeah. But as far as commenting on anything else I couldn't because I don't have the knowledge at all.

Mr. Furfaro:

Okay, I....

Ms. Kawahara:

I have a question for her?

Mr. Furfaro:

Excuse me I will give you your question in a moment.

Ms. Kawahara:

I'm sorry I thought you were done.

Mr. Furfaro:

I will be giving you that schedule and if you have any questions with that schedule I would suggest that you talk to the housing people after that.

Ms. Punohu:

Thank you.

Mr. Furfaro:

Okay Lani.



Ms. Kawahara: I just wanted to make sure you said that you like or support the fact that we would get money going into a revolving fund. Are you saying that you would support it if it means selling it to market to get it?

Ms. Punohu: You know what if I say no, I would like to see the housing remain with the people. I mean I want to make sure that we're preventing flipping and we're preventing speculation if I understand that correctly. In my hope and wish it would be that housing remains with the people and I don't pretend to understand the numbers and all of that. My simple wish is that Kukui'ula provide housing for the people that will work for them. They will pay them the good wages that they promised and that people will be able to stay in the housing. Other than that I'm not smart enough to understand any of it but I would rather see things stay with the people. They seem to be concerned that they will need to sell it because they can't make a profit for the lower percentage rates like Pa'anau, I got to really protect Pa'anau guys because those are low income guys and those are low end workers. So if they are saying that the only way to finance that at all and they have no other option it kind of puts me between a rock and a hard place because then I have to agree to it because if I don't agree to that, that it means that there won't be any funding for the lower end.

Ms. Kawahara: Just so you know right now there is no agreement to sell out any of those to market.

Mr. Furfaro: And in all fairness you should also know that at present there is no money if you do sell on any of our policies that go back into the revolving fund.

Ms. Punohu: Oh, okay. Then I don't get some of my wishes. Okay thanks you guys.

Mr. Furfaro: When I get you that schedule, please feel free to talk to the housing about it. Mr. Bynum had a question?

Mr. Bynum: I just wanted to add one thing to this. This is workforce housing for working families, currently median income and that means there's an equal number of families above this and a equal number of families below. It's not average right, it's a median where there is an equal number above and below on Kaua'i is seventy thousand, five hundred dollars. So a family, so eighty percent of that where this would begin so the lowest income people that would be eligible for this is eighty percent is fifty-six thousand four hundred. A hundred and eighty percent of median income right now is a hundred and twenty-six thousand, nine hundred and that's you know at least certainly at the time that this was written even families making that much money would have a difficult time finding housing and that was the purpose that the gap between what the average family can afford and what housing actually sells is so huge that we have these County programs to try to provide housing. This is for the workforce and under the current agreement those units would stay and be available to workforce people for ninety years. We have already pretty much agreed to change that to twenty-five. Now we will probably get other amendments today that make other provisions and then we will discuss those when they come.

Ms. Punohu: Pardon my concern you guys I really want you guys to listen....

Mr. Furfaro: Excuse me I need to share with you and I want to remind all members, you can answer a question after your time, you cannot generate a new question.

Ms. Punohu: No I'm not. I'm just going to make a statement.

Mr. Furfaro: I just want to make sure we understand.

Ms. Punohu: Yes I understand Uncle Jay. Can I just say that the reason why I'm concerned is that in January, the State Legislature is considering legislation to remove many public housing families and many of them are working families who might want to go work for Kukui'ula on the basis of how many years they have lived there in order to put in the current home list and making those units empty. So for me this situation well maybe that's why I want to make sure there's going to be those opportunities for people. Thank you.

Mr. Furfaro: Okay let me see if there are any more questions? If not thank you very much.

Ms. Punohu: Thank you very much for helping me to understand. Thank you.

Mr. Furfaro: Okay. Is there anyone else? JoAnn, come right up.

JOANN YUKIMURA: Chair Furfaro, Chair Asing, members of the Council JoAnn Yukimura for the record. I think it behooves all of us to keep in mind what the goal of this Kukui'ula provision is or was. It is housing for workforce, it is for that gap group that in times of hot economy cannot afford housing, as well as those who are in the lower income brackets. It's not only for Kukui'ula employees because it was designed partly so that Kukui'ula employees wouldn't compete for the existing housing. It was really to benefit the larger community in general. It's also part of the smart growth approach where people could bike or walk to work and live in the vicinity of their employment and it was long term, it was to make affordable housing in perpetuity knowing that if you let it go into the market it's no longer affordable in a very short time and then we are behind again. And so if we keep all of these purposes in mind for every proposal that is being made for the Housing Department we need to ask are we still achieving these goals. I'm sorry I only got this about ten or fifteen minutes ago and so I would like to reserve the opportunity to absorb it and understand it better and I will be submitting testimony.

Mr. Furfaro: Yes Jo Ann I want you to know what direction I plan to take this Committee today. There are amendments that are going to be submitted and I do not plan to do any action today on those amendments. I will ask that they come back on the agenda after they have been circulated for some commentary. We want to give everybody the opportunity so my plan is not to take it to a vote today.

Ms. Yukimura: Thank you I appreciate that. I think that's a very fair and wise process. So as architect of the ninety year buy back provision I want to say that it's admittedly not without flaws. We are stepping out to try to do something new because old ways haven't worked and I think it was actually co-created between myself and Kukui'ula with that objective of long term affordability. If this thing doesn't work let's find another way to make it work but let's not compromise the goal of long term perpetuity. You know all of the anti-speculation things are nice, buy back shared appreciation, etc... but once they expire then it's out in the market and we don't have affordable housing anymore. If, so they may be other forms whether it's cooperative housing or I think Gary Mackler was

sharing with me some ideas about land trust, housing land trust, then let's try to do it that way and I understand Kukui'ula's issues about holding cost on a down economy but that's why you have that incremental thing so you can gear yourself to the market, and I hear the three minutes.

Mr. Furfaro:

If you want to use your other three now you may?

Ms. Yukimura: Yeah I guess I should. So if we need to change it let's change it. I think the incremental or the holding off on the construction so you don't have to pour money into until the market turns up again is a good idea. That's what we did with Kalepa, we postponed the building and the fourth increment came in when we knew that there was a market and the need was so great. If that's what you know that's one way to mitigate the burden on the developer I think. I'm strongly against allowing market sales because that totally defeats the purpose of this housing provision. You don't have any affordable housing that insures you won't have affordable housing and all it is, is giving them additional zoning which should go through the regular zoning process. This had a very specific purpose, if we aren't going to do affordable housing let's not do anything. Or let's give the land to the County with the offsite infrastructure and let the County take on the burden and cost of building the units. Please don't let it go to people who already own a house because that doesn't make sense to me either. If the gap group is as important as we've been saying, we have to protect that housing for them so that we're sure we are addressing those needs. Some of the statistics provided by the housing department, sure we can see how much affordable housing is slated for the Po'i'pū area but what statistics I like to know is how many employees are there in the Po'i'pū-Kōloa area and how long are their commutes? And what are the projections for more employment in that area? And shared appreciation is a feel good illusion in my opinion. I remember a conversation I had with Ken Rainforth, and I said Ken okay so you have shared appreciation, what you get back for the County, will that be enough to provide replacement housing for the housing you have lost? And he said of course not. So we are always just continually behind because with housing going out into the market and we don't have land, or the cost of land and building houses again in the Po'i'pū area is far beyond what we would get back in shared appreciation. So where are we in terms of the public need and the public interest, we're behind again. That's why we've never even in our affordable housing ordinance we never looked at shared appreciation because it doesn't really achieve the goal we have to achieve. Thank you very much.

Mr. Furfaro:  
am recognizing you to the floor.

Mr. Bynum and then Mr. Kawakami. Mr. Bynum I

Mr. Bynum: Jo Ann thank you for your testimony and this happened on the Council before I was on it but I watched all of the meetings and it was you know this agreement was extraordinary in a lot of ways. Do you agree?

Ms. Yukimura: Yes well we were trying to do something new in order to achieve our goal of affordable housing in the Po'i'pū area in the long term, not just for a short ten years.

Mr. Bynum: And so I wanted to just acknowledge that this has unique clauses in it but so is the Kukui'ula Development extraordinary in my mind, and that it's fifteen hundred all high end homes and a golf course and shopping in this glorious place that the South Shore is. I remember all of the discussions on the questions you are asking now. Where does the housing occur and where do the workers live? The purpose of this was to have some workforce housing, seventy five units that would remain in the workforce housing inventory. The agreement for ninety years and the agreement that the

units did not go to market, the agreement that the developer if he went down the formula that was in the ordinance you know couldn't find any qualified buyers that the developer would remain or keep ownership and rent them until there was a qualified buyer. That was all agreed on. Is that correct?

Ms. Yukimura: Yes.

Mr. Bynum: I mean the developer didn't object and he agreed to it as part of the development. Is that correct?

Ms. Yukimura: I believe the ninety year buy back was his idea checked out with their Attorneys. But you know I have to say that there's not just the legality of it, it's also the functionality of it and you know I'm aware of the holding cost being a problem for a developer. That's why I have always advocated, give us land and off site infrastructure and let the County take on the burden of building the units. I think that's a fair process that doesn't put especially if they have to build for really low incomes like Mr. Mackler said it's a very deep subsidy and we should share in it in my opinion. But yes, short answer.

Mr. Bynum: But the economy has changed dramatically since this agreement was made right? And the provision that the Planning Commission agreed to, and the Housing Agency thought it was appropriate because of some real world difficulties with financing with ninety year buybacks was to change that to twenty-five years. So that was an agreement, I mean that was a change of the agreement but something that the Housing Agency felt was reasonable. Do you understand that?

Ms. Yukimura: I understand that, I don't accept that. I think we still should explore how to do permanent affordability and it has to be into rentals, even into the hundred forty to hundred eighty percent income.

Mr. Furfaro: Excuse me JoAnn. I want to make sure that Mr. Bynum focuses his question as a question and you respond to the question that has been placed on the table, just in all fairness.

Ms. Yukimura: Thank you. I'm sorry.

Mr. Bynum: I think I've been asking questions...

Mr. Furfaro: It wasn't directed at you Mr. Bynum. It was directed at the testifier.

Mr. Bynum: Okay. So your testimony then would be leave everything as it is? Leave the ordinance don't...

Ms. Yukimura: No, no, no, it's not leave everything as it is. Let's explore some other arrangements that address some of their needs but also maintain our goal of affordable housing for gap group in perpetuity.

Mr. Bynum: Okay, thank you.

Mr. Furfaro: JoAnn we have other questions for you.  
Mr. Kawakami...

DEREK KAWAKAMI:  
discussion.

No I'm going to wait until we open it up for

Mr. Furfaro:

Okay, very good. Councilwoman Kawahara.

Ms. Kawahara:  
shared...

Thank you. Hi JoAnn, you were talking about the

Mr. Furfaro: Excuse me, excuse me. I have to excuse myself from  
the table, and Mr. Chair Can I give the meeting to you? I'm just going to step out for a  
minute.

Mr. Asing:

Sure.

Ms. Kawahara: Okay, thank you. You had mentioned, we were  
discussing the shared appreciation buyback. I need to understand this. Right now the  
question was about four percent equity for every year that the place was owned and the  
buyback period was twenty-five years. So the shared equity is a concept that, if it's sold  
before the twenty-five years you get a four percent but it still stays. Does it still stay in the  
inventory?

Ms. Yukimura: Oh no. It's going out, shared appreciation means  
you're letting it be sold into the market but the County gets back some money. The person  
who has been subsidized through this public policy doesn't get this major windfall without  
sharing it. That's what it means.

Ms. Kawahara:  
twenty five years and it goes...

Okay so anytime the buyback before within the

Mr. Yukimura: It will go back okay, so if the house is sold, excuse  
me, within the twenty-five year buyback period, it's sold back to the County at a price of  
their equity plus four percent is my understanding in general.

Ms. Kawahara:

So it does stay in the County?

Ms. Yukimura: And the County can then resell it to a qualified  
family, a family like the one who bought it in the first place because they're the ones who  
get left out of this if it goes back into the market. Other qualified families no longer can  
afford market price but if it goes back to the County, the County will sell it maybe with a  
slight increment so it may go up a little level to the next level of affordable families. I mean  
families that qualify for affordable housing and at least they get it and it's not unavailable  
to people who need it who we wanted to serve.

Ms. Kawahara: Because I want to be sure that I'm very clear on that  
because I am hearing that I don't particularly think it should go out to the open market, but  
if it stays in our buyback if within the twenty five years it stays within the County and we  
get the four percent if they try to sell it before the twenty five years...

Ms. Yukimura:

No they get the four... the buyer...

Ms. Kawahara:

I will double check with them.

Ms. Yukimura:

The seller gets a percentage.

Ms. Kawahara: The seller does?

Ms. Yukimura: Yes, the person who's selling it.

Ms. Kawahara: But the unit stays with the County, up to the twenty five years?

Ms. Yukimura: Yes because they will sell it to the County.

Ms. Kawahara: Yeah and we have ah... Okay.

Ms. Yukimura: And then the County will sell it to a qualified family.

Ms. Kawahara: So it actually sounds like we...

Ms. Yukimura: That's the power of a buyback. That's the power of a buyback.

Ms. Kawahara: Okay.

Ms. Yukimura: You can keep it in the affordable housing inventory for other families who need it.

Ms. Kawahara: Okay.

Ms. Yukimura: And the question is. What do we owe these families? What is his name, the sustainability expert? And they are doing it in Whistler. We don't owe them a nest egg, we owe them a nest where they only pay thirty percent of their income, a decent wonderful place to live and close to work and they will have a lot more discretionary income rather than if they had bought a house on the open market if they could afford it. So that's a different philosophy, it's what is the role of Government. Do we give certain people this huge windfall at the exclusion of other families coming up? Or do we keep it within our County family so we can keep giving it to families that need affordable housing. And people who want to live in it all their lives still can.

Mr. Furfaro: Excuse me again, excuse me one more time.

Ms. Yukimura: Sorry.

Mr. Furfaro: This is a question, a Q&A response. This is not a comparison of philosophies.

Ms. Kawahara: Thank you.

Ms. Yukimura: Sorry.

Ms. Kawahara: So one more question. I'm not sure, are you in support of shared appreciation if it stays in our County inventory?

Ms. Yukimura: Councilmember Kawahara, shared appreciation doesn't get triggered until it's sold on the market.

Ms. Kawahara: Okay. Thank you.

Ms. Yukimura: It presumes and assumes being sold on the market.

Ms. Kawahara: Okay and I'm seeing him nod, so I assume that...

Ms. Yukimura: That's what shared appreciation is.

Mr. Furfaro: I can call him back up.

Ms. Kawahara: Okay, thank you.

Mr. Furfaro: I do have a question from representative Kawakami.

Ms. Yukimura: You just gave him a promotion.

DEREK KAWAKAMI: Promotion yeah, right on.

Mr. Furfaro: I don't think so he represents people on our Island.

Mr. Kawakami.

Mr. Kawakami: JoAnn thank you so much and you know I think the discussion is good, the philosophy. My question is, during your time as a Councilmember, you guys have probably been faced with the propositions that we've been faced with. One of them is a request from the department to decline the repurchase of affordable housing units. Have you guys been faced with that communication coming across on the agenda when you were a Councilmember?

Ms. Yukimura: Yes.

Mr. Kawakami: And have you guys actually gone against that or have you guys actually approved to decline the repurchase?

Ms. Yukimura: There were times where we have declined it because we have thought that we haven't been able to resell it right away. I think that has been our reason or the price has been too high. Some of them are not controlled by the affordability paradigm.

Mr. Kawakami: Yeah so that's good too because even for us, I questioned when I first saw you know all these request to decline the repurchase I thought aren't we supposed to be keeping this in our inventory. But after talking to housing and hearing the business aspect side of it, if it doesn't pencil out then at the end of the day, it doesn't pencil out. So all this we need is to keep it in the housing inventory in perpetuity. I agree, I totally agree but we got to be flexible too, to the changing times and needs, so I hear your point about keeping it affordable in perpetuity but we the body has also contradicted that by declining to repurchase units.

Ms. Yukimura: Well if you time the development properly and that's what I see you trying to do here, you are going to be much more likely to achieve your goal of affordable housing if you use the buyback provision. We should probably also really boost our revolving fund, that should be one of our goals so that we can be in the position to repurchase or to hold on to properties during times that are difficult. And actually from a smart growth stand point we need to go to more dense and multi-unit housing as well which will all mitigate the buyback problem. So that's what we need to do because otherwise and you do have to take the long term because I remember in the late 1990's and Chair Asing will remember it. When landlords came to the market was down after the hurricane, landlords came to the County and said stop building rental housing but that was the time to build because the price was cheap and everything. And then by 2002 we didn't have

enough affordable housing. So you just can't do it according to the down times, I mean that are really short sighted because we know we go through those and we have to do it for the long term.

Mr. Furfaro: Okay, JoAnn I want to thank you for recognizing some of the attempts here to be timely with the incremental building, referencing the fact that we have to boost our revolving fund especially if we have the opportunity to purchase fifty of these units. I don't know if there are any other questions here. If not, thank you for your testimony.

Ms. Yukimura: Thank you.

Mr. Furfaro: But as I said my plan is to see if there are amendments to be introduced and defer for two weeks.

Ms. Yukimura: Alright, thanks very much.

Mr. Furfaro: Is there anybody else that would like to testify? Is there anyone from the applicant that would like to come up?

TOM SHIGEMOTO: Good afternoon. For the record my name is Tom Shigemoto, I'm representing the joint venture Kukui'ula Development Company Hawai'i, LLC, & A&B Properties.

Mr. Furfaro: Are there any questions that anyone would have from the Council? You have heard my commentary at this point about seeing if there are amendments to be introduced and then my hope is to defer for two weeks so that the members have an opportunity to look at the amendments. Just on a footnote, Tom, and I want to make sure that you have a copy. This is the current median income schedules for the County of Kaua'i that we have implemented in housing and I have given Anne her copy of the same. Are there any questions at this time? Yes go right ahead.

Ms. Kawahara: Hi Tom, thank you for being here. And I do want to recognize as I have learned over this discussion and while we work with the Housing Department that Kukui'ula is one of our commendable developers in working with us for affordable housing, workforce housing, and that you provided early and on time and all the good things and I wanted to thank you for that.

Mr. Shigemoto: Thank you.

Ms. Kawahara: The question I have is about the seventy-five units that this is for your workers. I think Councilmember Furfaro said that two-thirds is for... what is the project? The project is for the seventy-five, two-thirds and one-third?

Mr. Furfaro: Fifty of the units are directed at one forty and below.

Ms. Kawahara: Yeah, yeah, I mean...

Mr. Furfaro: That's what I mean.

Ms. Kawahara: So my question was, where did my thing go here oh here, so that would make two-thirds are projected at eighty plus up to one forty that would be fifty-six employees, I kind of used my phone calculator. So fifty-six employees and nineteen would be the other one third and that would make seventy-five?



Mr. Furfaro: Fifty is sixty-six percent of the seventy-five total units.

Ms. Kawahara: Okay.

Mr. Furfaro: It's two-thirds.

Ms. Kawahara: Okay. So my question is, so how many of those are high level that are going to be doing eighty to one eighty because there seems to say that there's going to be a one-third that are below the eighty to one eighty median of your employees? They're going to be upper middle management? We're going to be you know two thirds percent of that, of seventy-five employees? The majority of them are going to be upper management?

Mr. Shigemoto: Not necessarily, not necessarily. Let me clarify one thing you might be a little bit confused about the seventy-five...

Ms. Kawahara: I'm most likely confused.

Mr. Shigemoto: The seventy units as I mentioned the last time I showed up here was actually offered by Kukui'ula for workforce, our workforce. What was negotiated was providing units in the income ranges eighty percent to a hundred and eighty percent of the median income. Twenty-five units would be in the eighty to one ten percent or one hundred and ten percent of the median income and one eleven to one forty, the next income group with twenty-five units for one forty, one forty-one to one eighty. As I said we have employees in all these different income groups so the units are really intended for not only Kukui'ula employees but to employees of the general public as well. What was negotiated was thirty units of the seventy-five would go to members of the general public and forty-five would be reserved for Kukui'ula employees. What we're talking about now and your question is what we discussed with the housing agency as to the buyback provision. Because they cannot afford to buyback units that were built for the hundred forty to the hundred eighty percent income group range, we agreed that they would take the first position on buybacks for one hundred forty percent and below so that amounts to fifty units. Kukui'ula would then be responsible for repurchasing the units for the income groups of a hundred forty to a hundred and eighty percent of the median income.

Ms. Kawahara: Okay, I apologize I was equating seventy five units with seventy five employees.

Mr. Shigemoto: No not the employees.

Ms. Kawahara: So that why it was confusing, that's why it was confusing. So I'm wondering about the people that aren't going to be middle management, that aren't at the eighty to one eighty in your workforce. Where are they going to live? That was it.

Mr. Shigemoto: I don't know where they're going to live but, they certainly if they fall into those income groups they would qualify for purchasing or renting in the project, the housing project.

Ms. Kawahara: With the eighty to the one eighty?

Mr. Shigemoto: Yes.

Ms. Kawahara: So pretty much all your employees will be making eighty to one eighty.

Mr. Shigemoto: Some might be even making higher or even lower than that.

Ms. Kawahara: Okay, I was wondering about the lower, I was wondering about the lower. Thank you.

Mr. Shigemoto: You're welcome.

Mr. Furfaro: Thank you Tom for the summary of that and let's see if there are any other questions here. We are very close to what is a need to change the tape and I would like to indicate that at the tape change I'm going to ask for amendments to be introduced so that they can be circulated. I'm going to take that back so that they can be introduced and circulated so that the public can also have access to them, then we will kind of go from there if there are no more questions for the applicant. Anymore questions for the applicant? Tom, once again thank you very much for that quick summary on the housing needs on the fifty units and the buyback on the developer over one forty one.

Mr. Shigemoto: You're welcome. And could I after this meet with Gary...

Mr. Furfaro: I will give you six minutes of your own testimony if you want.

Mr. Shigemoto: Okay, I would just like to mention after hearing what Gary said and even some of what JoAnn was saying. To specify the total exact number of units per phase really doesn't do service for the County and us because we don't know what the market conditions are going to be like at the time that these units are being built. I would also request that the Council consider being flexible and not specify exactly how many units per phase and let us work that out with the housing agency. Currently that is in our housing agreement that we do incrementalize these units so we can discuss types and numbers and the income levels at that particular point in time.

Mr. Furfaro: So the mutual agreement becomes you as a developer and the Housing Department on the size of the incremental development?

Mr. Shigemoto: That's correct. And then we would also agree to a trigger say the two years hence or something to that effect.

Mr. Furfaro: That would be my only concern and I just want to place it openly that there's a trigger for the proceeding increments?

Mr. Shigemoto: Yes.

Mr. Furfaro: Like twenty four months or something...

Mr. Shigemoto: Yes.

Mr. Furfaro: Any other questions for Tom? If not I'm going to do this. I'm going to ask that we take a caption break and a tape change and when we come

back we'll see if we can introduce some amendments and then I will move to defer this for two weeks.

Mr. Shigemoto: Thank you.

Mr. Furfaro: Thank you.

There being no objections, the Committee took a caption break and a tape change. The committee recessed at 3:39 p.m.

The Committee reconvened at 3:54 p.m., and proceeded as follows:

Mr. Furfaro: Members I'm going to go ahead and call this Committee back to order since we've taken public testimony. As I stated earlier my intent is to introduce and circulate amendments that in fact can be made available to the public as well but the main purpose is to move to a deferral for two weeks until people have had time to digest those items. Councilmember Kawahara did you have amendments? Did you have amendments? Oh no, wait a minute I'm sorry maybe that was Mr. Bynum I saw. Was that for the next item?

Mr. Bynum: The next item.

Mr. Furfaro: Okay that's not for this. Mr. Kaneshiro.

DARYL KANESHIRO: If I may Mr. Chair of this Committee, would we take a motion to vote on the Bill first before I do any amendments?

DICKIE CHANG: Move to approve.

Mr. Furfaro: You have a motion to approve. May I have a second?

Ms. Kawahara: Seconded.

Councilmember Chang moved for approval of Bill No.2361, seconded by Councilmember Kawahara.

Mr. Kaneshiro: With that I do have an amendment circulated among my Committee members and basically the amendment is parallel to the discussions that we've been having for I say the past couple hours. If you look at the amendment and you look at the housing memorandum and also the Planning Committee Chair's questionnaire to the Housing Department, many of the discussions that occurred today are contained in the amendments. If we could have that also circulated to the public please... Basically I guess I'm asking to make a motion to have the amendments that are on the floor to be introduced and I will be the one making the introduction at this time. I would like to have a motion to approve? I'm making that. I need a second...

Mr. Kawakami: Seconded.

Councilmember Kaneshiro moved to amend the bill as shown in the floor amendment attached hereto, seconded by Councilmember Kawakami.

Mr. Furfaro: There have been amendments introduced by Mr. Kawakami, but you are okay with the fact that I hoping just to defer any votes on these amendments?

Mr. Kaneshiro: That's correct Mr. Chair, and that would give everyone an opportunity to review the amendments that are circulated.

Mr. Furfaro: Okay. Since we're back in order may I ask if there are any other comments? These amendments will be made available to the public. Are there anymore comments from the individuals here? If not I'm going to... And I again I want to say that we introduced them and seconded it but it is not my intent on a vote today but to defer.

Mr. Bynum: I understand.

Mr. Furfaro: I'm recognizing you Mr. Bynum.

Mr. Bynum: I know that discussing affordable housing agreements is confusing because of all of the numbers and the percentages, and percentages of median income so and I'm hoping to be corrected here but I'm going to try to make this as simple as possible. Kukui'ula is in my view an extraordinary development and its fifteen hundred lots all of which will be sold at the very high end. It's a golf course shopping center and a lot has been made in the past that there originally was thirty five hundred, you know the density was thirty five hundred units not fifteen and changing it to fifteen was a reduction of density. It was also a very big reduction. I believe in the character of that community with thirty five hundred units. Presumably we would develop them as a mixed use community that had multifamily units and single family homes at a variety of different price points which may have included housing that eventually could be affordable to working people who live on Kaua'i. Moving it to fifteen hundred units made it for sure that it would not be a development for the average working person on Kaua'i. We have a number of those on Kaua'i that's a community that you know many people that have great means would like to live in and own a home in. That's just a reality that, that change cut both ways by reducing density but it also reduced the character and the mix of it.

As the Council at the time did that, they had entered into negotiations and negotiations are a good thing and there are many good things that Kukui'ula is providing through those negotiations for the community that we haven't discussed here, like parks, and trails and roadways, and it's a very serious capital investment. Once that decision is made I really want Kukui'ula to be successful and to be a good project for Kaua'i. Part of that deal was seventy five units of affordable housing in the surrounding community for workforce for working families on Kaua'i and that was an extraordinary deal, ninety year buyback, so the real key provisions though were seventy five units at the mix we already discussed that would remain affordable throughout the ninety year period because the marketing schedule, unlike other units said you market to these qualified buyers on Kaua'i, but if you can't find them you maintain ownership of the unit and you rent it until you can find a qualified buyer. If the unit, if the person purchases the unit and their life changes then you buy Kukui'ula you buy back the unit to keep it in affordable inventory and find another qualified buyer. For ninety years there will be seventy five units affordable to the workforce. The world did change, the market changed, Kukui'ula like many people I assume are having difficult times financially and that market is gone. Presumably it will come back so when they approach the County and said hey times have changed let's relook at this issue, the Planning Department and the Housing Department looked at that and said, you know this ninety year provision was extraordinary and we understand that in the new fiscal climate it's difficult to get financing and so we're going to agree to a very substantive change of not ninety years but twenty five years. The recommendation from the Housing Agency was to remain the other provisions remain so you know if the units need to be sold they get sold to affordable housing, they don't go to market okay. Now the

amendments that are before us make many more in my view substantive changes. They say that and the primary one being and I won't go into all the details...

Mr. Furfaro: I would appreciate it if you didn't since I announced that I'm going to defer it and I do want to give you a fair and reasonable amount of time to make your comments when we come back in session in two weeks.

Mr. Bynum: So I have had an opportunity to review the amendments that have been circulated and they make many other changes that are not part of the recommendation that came to us from the Planning Commission, or from The Housing Agency including, the ability to go to market relatively quickly if qualified buyers cannot be found. There are provisions in this amendments that I could support but not the ones that and going back to Jo Ann's testimony "Keep the goals in mind" The goal in mind is for in this community to have some level of workforce housing and through now a twenty five year period if these changes are accepted. The provisions in these amendments that allow the developer to sell the house at market and go out of the affordable inventory, I can't support.

Mr. Furfaro: In all fairness it also should be pointed that the amendment indicated if that happens there is money that comes back to the County Housing also just in all fairness.

Mr. Bynum: Well we will get into those details in two weeks.

Mr. Furfaro: Very well I wanted to make sure we were clear and objective as to what the amendments were that were out there. Did you want to speak Mr. Kaneshiro?

Mr. Kaneshiro: Not at all. Thank you Mr. Chair.

Mr. Furfaro: Okay, Mr. Kawakami, Chairman Asing did you want to speak as outside the committee since the amendment is circulated?

Mr. Asing: If I was to make one comment I would say the County has always the opportunity to buy it if they want to.

Mr. Furfaro: That's correct. The fifty unit purchase is in there.

Mr. Asing: If the County is so bent on that, then buy it, it's as simple as that.

Mr. Furfaro: Your point is well taken.

Mr. Asing: Simple as that. You want it, buy it.

Mr. Furfaro: Councilwoman Kawahara before I ask for a deferral?

Ms. Kawahara: No comments thank you.

Mr. Furfaro: No comments at this time? Well I'm delighted we've been able to circulate the amendments Mr. Kaneshiro, and on that note I am looking for a motion to defer...

Mr. Kaneshiro: Move to defer.

Ms. Kawahara:                      Seconded.

Mr. Furfaro: Thank you very much. All those in favor say 'aye'

Committee Members: "aye"

Mr. Furfaro: Thank you very much.

Upon motion duly made by Councilmember Kaneshiro, seconded by Councilmember Kawahara, and unanimously carried, Bill No. 2361 was deferred.

Mr. Furfaro: We're going to take a five minute recess to regroup here. Can I make a note of a five minute recess to regroup here. I'm sorry we're going to wait for all of this commotion behind us to get sorted out.

There being no further objections, the Committee recessed at 3:39 p.m.

The Committee reconvened at 3:54 p.m. and proceeded as follows.

Mr. Furfaro: The second item today on the Planning Committee's Agenda is Bill No. 2364 and may I ask the Clerk's office to read the bill.

Bill No. 2364

A BILL FOR AN ORDINANCE TO AMEND  
CHAPTER 8, KAUAI COUNTY CODE 1987,  
AMENDED, RELATING TO THE  
COMPREHENSIVE ZONING ORDINANCE  
(Transient Vacation Rentals)  
[This item was deferred.]

Mr. Furfaro: Thank you very much. I'm going to just take a moment of personal privilege as the Chair of the Committee here. First and foremost I am going to ask that my responses to the questions submitted by Barbara Robeson at the last meeting as a courtesy, I did tell you that I would respond to them in writing. I do want you to know that they are, what I think the responses are and not the bodies so that there was no serial communication here of any kind and at this particular time may I ask that my responses to the eight questions be circulated to the other members as well as Barbara Robeson for her responses and that's item number one. This bill has really two parts to it regarding Ag Land and also some of the impacts of 4064 which may imply issue with other TVR's and other parts of the Island, so I will be breaking form here and allowing Mr. Asing as a non Committee member but Chairman of the Council to make a presentation during this session. Mr. Mel Rapozo had to leave as it relates to the Agricultural piece; he gave a hand written note to the Council to please honor the intent of Chapter 205 H.R.S. Please honor the intent of the authors of Chapter by honoring the law as it is written. Do not attempt to undo what was done to preserve and protect our precious Ag lands.

Thank you Mel Rapozo. Although I didn't get to read all four parts of the Attorney General's comments the last time around, I do want to point out that Mr. Rapozo had to leave and submitted that as a hand written testimony. We have read the bill and we have circulated... Barbara did you get the copy of the answers? And again I want to reiterate these are my responses to the questions that you submitted. Is there anyone else in the audience that would like to get a copy of this? Okay could we make some copies and place

them here... Thank you so much. On that note I'm going to go ahead and suspend the rules and see if there is public testimony out in the audience as it relates to 2364, and I do understand that we have some amendments today to introduce?

Mr. Bynum: Yes Mr. Chair. So you want a motion to approve?

Mr. Furfaro: I would like to first see if I can take public testimony just by suspending the rules before we get into any format. So the rules are suspended and if there is an opportunity for anyone to come up and speak let me give you two options. Option one you can come up now prior to the meeting and speak for three minutes or and save three minutes for after any circulated amendments. Or you could speak now for your six minutes of time and the option is yours, please declare it if you come up. On that note the rules are suspended, is there anyone that would like to come up and speak at this time?

There being no objections the rules were suspended.

Mr. Furfaro: Please come right up.

Mr. Asing: Excuse me, before we start, I'm not sure how you intended to handle the communication from Ms. Robeson to you?

Mr. Furfaro: I took it as, she submitted those eight questions and I did not get into any dialog with her at that time. When she came up if she had particular questions then I would be glad to have some narrative with her, but she submitted them in writing and I'm responding to it in writing and circulating it with all the members so that this whole perception that had any discussions separately on these items.

Mr. Asing: Okay so it is not your intent to discuss these issues that she has with the County Council?

Mr. Furfaro: Oh if she comes up and wants to discuss them, I will be open to it. I just want to make sure everybody... since they seem to be common questions so.

Mr. Asing: Thank you.

Mr. Furfaro: I hope that helps.

Mr. Asing: Yes. Thank you.

Mr. Furfaro: Okay, you're going to have to introduce yourself.

GEORGE VOLKER: Good afternoon Council. My name is George Volker. As a follow up to my testimony June 23<sup>rd</sup> I'm happy to report that the County Planning Department did cite both Blissful Waters and Dilly Dalley with zoning violations for their illegal vacation rentals on their properties. Included in that is cease and desist order, cease and desist immediately, however they are still operating as of today.

Mr. Furfaro: Okay George, just as a commentary first of all, you brought that to our attention and I'm very glad to see that the Department Heads have responded to you, but I just want to make sure you understand that there is some things we can communicate to them but there is very little we can direct them to by way of the Charter.

Mr. Volker: Yeah I understand, this actually was dated prior to our June 23<sup>rd</sup> meeting and I just received it subsequent to that meeting and as a co-owner I was notified.

Mr. Asing: Are you presenting those as evidence to this Council? Is that what you're trying to do now?

Mr. Volker: Well I can, I do have copies of them if you wish but that wasn't my intent.

Mr. Asing: I would like to see them.

Mr. Volker: Okay.

Mr. Furfaro: I will have the staff collect them from you.

Mr. Volker: Okay fine. Today I just wanted to discuss further Hawai'i Revised Statutes as it pertains to vacation rentals. I am just reading my letter that I have submitted to you already. Dear Council Chair and Council Members, Transient Vacation Rental owners operating on State Agricultural lands claim that they have been operating legally simply by virtue of paying State GET and TAT taxes. However, without a use permit, these owners have never been operating legally. Instead, they have been violating both the Farm Dwelling Agreement and the Hawai'i Revised Statutes Chapter 205-4.5 (permissible uses within the agricultural district). Now these owners propose to legitimize their illegal use with Bill No. 2364. This bill would allow them to apply for a special permit provided for by HRS Chapter 205-6. HRS Chapter 205-6 states "(c) The county planning commission may, under such protective restrictions as may be deemed necessary, permit the desired use, but only when the use would promote the effectiveness and objectives of this chapter; provided that a use proposed for designated important agricultural lands shall not conflict with any part of this chapter." But special permits for TVRs on agricultural lands would not promote the effectiveness and objectives of this chapter and would conflict with another part of this chapter. HRS Chapter 205-5 states "(b) provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation and (2) provided that overnight accommodations shall not be permitted. HRS Chapter 205-5 clearly prohibits overnight accommodations in agricultural districts. Bill No. 2364 would not "promote the effectiveness and objectives" of HRS Chapter 205. Instead, Bill No. 2364 would violate the provision that "overnight accommodations shall not be permitted. Bill No. 2364 would attempt to allow TVR owners who had been operating illegally to continue to defy the intent of Chapter 205. I urge the Council to vote no on Bill No. 2364. Thank you.

Mr. Furfaro: Thank you. Let me see if there are any questions for George? We have your written testimony and there are no questions.

Mr. Volker: Thank you.

Mr. Furfaro: Excuse me, hold on George...Mr. Chair.

Mr. Asing: Can we have copies?

Mr. Furfaro: I was going to send the staff to collect it.

Mr. Asing: Of the testimony and the two violation letters.



Mr. Volker: I provided copies of the testimony and the cited chapter 205 and 206, 205-5 and 205-6. I provided that yesterday to the County Clerk for circulation to you. But I will gladly provide it again.

Mr. Furfaro: If you can provide that with Jade one more time so we do have it.

Mr. Asing: Jay, and the violation.

Mr. Volker: And you want a copy of the letter also that I gave yesterday.

Mr. Furfaro: Yes Please.

Mr. Volker: What I gave yesterday.

Mr. Furfaro: Yes. We'll give those right back to you. Did you have anything more Chair?

Mr. Asing: No, thank you.

Mr. Furfaro: Thank you. Is there anyone else that would want to testify? Please declare if you're going to use three minutes or all six.

BARBARA ROBESON: Six today, thank you. Thank you Chair Furfaro, Barbara Robeson for the record. I am again here on behalf of Protect our Neighborhood 'Ohana. It's made up of residents of Wainiha and Hā'ena and thank you also Mr. Furfaro for the response to these questions that we have previously asked. I'm not going to ask you any further details about that today and I'm kind of going to be all over on testimony.

Mr. Furfaro: I promised you that I would respond in writing and I did.

Ms. Robeson: I have something to hand out to you which I'm also not going to be talking about today but I thought you might like to have it for your information. It's a article that was in Kaua'i Business and Real Estate, August 1988 that talked about non conforming uses, building structures, etc... What I do have and I would like to discuss with you is I have a couple of things up there on that bulletin board if I could have permission to come forward.

Mr. Furfaro: Yes can we turn that around and allow Barbara to come up and make a presentation. Thank you for this although we have it already. Yes we have a portable microphone. To the Clerk's desk would you start her clock when she begins her presentation? You can set it for six minutes.

Ms. Robeson: Okay these are TVR non conforming use certificates that have already been issued. Actually sorry to tell you but the map should be the other way but I know it is very difficult. Okay down here is Hanalei Bay, if you were coming from Līhu'e here's Kūhi'ō Highway and you were heading towards Hā'ena. So this is Hanalei and as you can see these are the Transient Vacation Rentals that are in a residential neighborhood. As you come from Kūhi'ō Highway, just to orient you, here is Aku Road and then you would head down to the pier down here and then continue on Wehi and all the way out and there's this pockets of course you can see where the vacation rentals are. Now this is the area that has been the subject of the, protect our neighborhood ohana group.

This is the Wainiha and Hā'ena area and this does not include powerhouse road. This just starts, let's see this is Kūhiō Highway right here and this is the Hanalei Colony Resort. As you come across the double bridges and you cross Kipuhi point, then you start down the stretch towards Hā'ena and these are the vacation rentals that are listed on the website of the County. These are the ones that are operating with a current TVR-NCU permit, and there are other ones that are operating without permits. So I guess our question as related to the bill that's before you is, how many more TVRs is this going to create? We are anticipating that it will create quite a large number of additional ones that are shown on the map. That's all that I have...

Mr. Furfaro: Thank you Barbara. Your question about how many new TVRs will be added by this bill outside the VDA was one of the eight questions you submitted and to the best of my ability it is my understanding that really you had to be in the residential area and identify prior to March 7, 2008, and that was my response in this piece.

Ms. Robeson: Can I respond?

Mr. Furfaro: You certainly may that's why I posed the question.

Ms. Robeson: Okay, there are people or property owners that did not apply for permits for one reason or another, they might have had a building code violation, they might have had a zoning violation, and they might have been denied. According to my interpretation of this bill those property owners could come back in and apply for a permit, so this is only reflecting the people who have permits now. There is a pool out there of others who don't have permits at this time but they could claim that they were legally operating if they produced evidence and so forth and come back to the planning department to get a permit. So the pink and the red dots on that map could increase both on Island wide actually.

Mr. Furfaro: I appreciate that question and I will continue to pursue it. I do want you to know that and I do want to say that you know to me and I sat on the general plan with you when we dealt with this and the intent was to have a provision on anything going forward and to me that's still the intent and that date was March 7, 2008 and I will share your concerns with the County Attorney in my own correspondence.

Ms. Robeson: Thank you.

Mr. Furfaro: Any other questions?

Mr. Asing: I have.

Mr. Furfaro: Oh Mr. Chair has a question?

Ms. Robeson: We want the maps back.

Mr. Furfaro: I didn't mean that in sense of keeping them but thank you for the presentation.

Mr. Asing: What is the total for your Hanalei map?

Ms. Robeson: It's residential and there is a strip along the beach that is open, but its residential it's not resort or anything like that.

Mr. Asing: No, that's not the question. The question is the count?

Ms. Robeson: Oh I'm sorry, the dots?

Mr. Asing: How many?

Ms. Robeson: Oh how many? 192.

Mr. Asing: What?

Ms. Robeson: 192, one hundred and ninety two.

Mr. Asing: For Hanalei?

Mr. Robeson: For the whole area, for both maps.

Mr. Asing: Did you break it down into Hanalei and only and Hā'ena only?

Mr. Robeson: I think Caren can break it down for you.

Mr. Asing: Okay, so it's 192 for both?

Ms. Robeson: Yes.

Ms. Robeson: I was just curious, I like numbers so if you say Hanalei, what's the number and if you say Hā'ena, what's the number.

Ms. Robeson: Okay.

Mr. Asing: So it's 192 with the combination of both?

Ms. Robeson: We will give you that information.

Mr. Asing: Okay, that's all I have.

Mr. Furfaro: Thank you and if you can get that to us at a later time, I would appreciate it. Lani you had a question?

LANI KAWAHARA: Thank you. Barbara yeah I think pretty much, do you, I mean that stuff is very yucky, yucky and personally I find it very disruptive and is damaging to the fabric of neighborhoods that you talk about and Caren talk about. What would have happened if we had made a rule saying that there are no more TVRs on these lands in 2000? How many of those wouldn't be there?

Ms. Robeson: Numbers, well I would say that it would probably be reduced by about eighty percent.

Ms. Kawahara: So in 2000 I think we got the famous Kobayashi thing that says do something yeah about it.

Ms. Robeson: Well actually our group although went by a different name and we started before that in 1998.

Ms. Kawahara: Okay so what makes me so sad is that nothing happened from 1998 until now that we have this thing. It's just really hard to swallow that we didn't do anything then and all of that increased, obviously you said eighty percent. I believe it's this Council's intention and also it's the intention of the bill to stop all that and I don't think there's any disagreement is there?

Ms. Robeson: I see two areas that this bill is about. One is about TVRs on Ag Land which currently are not permitted although if you have a farm dwelling agreement it's written in that farm dwelling agreement that you can ask for a use permit. The other part of this bill is from my perspective is it guts a lot of requirements that were in the existing bills in terms of legal requirements.

Ms. Kawahara: But the main goal is to cut it out?

Ms. Robeson: Well the main goal of the other one was to cut it out of the existing bill was to cut it out of the existing ordinance was to cut it out.

Ms. Kawahara: So you found a huge difference in the ordinance before from the one that we're looking at now?

Ms. Robeson: Well I think there were flaws in the existing ordinance and the implementation of the ordinance was not up to County standards or what I would consider County standards is what they should have done.

Ms. Kawahara: And I think it's our contention that the bill we're looking at now is to address the lousy implementation, sorry the implementation of it. I wouldn't want to characterize it.

Ms. Robeson: If that's correct I would really like to be convinced that that is correct because I read the bill a different way.

Mr. Furfaro: Do you have another question?

Ms. Kawahara: So how many are out there now? How many out there now?

Ms. Robeson: Well on the two maps, a hundred and ninety two.

Ms. Kawahara: Hundred and ninety two. What is eighty percent of a hundred and ninety two? I can't it's just easier I'm sorry.

Mr. Furfaro: A hundred and fifty four, round numbers.

Ms. Robeson: But we want the twenty percent that was existing. Well there were a lot of long term rentals or TVRs that had been in existence for quite awhile. I won't say a large number but they have been around for years you know thirty years like that, and a lot of them were owned by families that live here and they come out and use it then they rent it in the other times that they weren't there. But the new ones could have taken place over the last ten fifteen years.

Ms. Kawahara: these are Residential or Ag?

Ms. Robeson: These are all residential.

Ms. Kawahara: So there's even more problems with Ag then?

Ms. Robeson: Well we didn't get into the Ag thing, our focus has been Wainiha and Hā'ena. We just happened to present because it's such a glare well this is Wainiha and Hā'ena, it's such a glaring map when you look at Hanalei too which even has more than Wainiha and Hā'ena.

Mr. Furfaro: Just for a moment if I can intercede on your question and get us back to this piece. The fact of the matter is in 1999 the Kobayashi opinion came out and the Kobayashi opinion, basically said that if it wasn't multifamily and so forth, that the Council needed to do something to regulate TVRs outside of the VDA areas. That's what, and the Kobayashi opinion was made public and obviously once it was made public many people looked at that enterprise. In the 2000 general plan it was recommended that the Council work towards prohibiting its growth. In 2002, I was on the Council and Councilwomen Yukimura and myself had approval from Mr. Asing as chairman then to fund a Stakeholders session with Elizabeth Freeman. The outcome of that was...

Ms. Robeson: That can't. Elizabeth can't...

Mr. Furfaro: I'm sorry I said Freeman, different Elizabeth. And just so that we're all current as that thing evolved, it took almost five years to get us to the application date which I made reference to in the response I gave you Barbara in item eight.

Ms. Robeson: Right in 2008.

Mr. Furfaro: And it's the 2008 piece that attempted to regulate. How it was implemented, its performance is clearly subjected at this time and I don't want to go either way about its performance but it was in the hands of the Planning Department. We are trying to fix that to some degree and we are responding to the fact that hopefully no new TVRs can be created and that was the response I gave you. I will seek out additional clarification but I just wanted to put that entire context together. My calculator now actually says that it's a hundred and fifty six and I apologize I said one fifty four.

Ms. Kawahara: Thank you.

Mr. Furfaro: It's one fifty six roughly eighty percent on that number.

Ms. Kawahara: Thank you.

Mr. Furfaro: Do you have any more questions?

Ms. Kawahara: I do. In the implementation that was generated from 2008, that went to the Planning Department to implement?

Ms. Robeson: Correct, to issue the permits.

Ms. Kawahara: To issue the permits right? So in this bill, where is it going?

Ms. Robeson: I don't know.

Ms. Kawahara: It's going to Planning Commission yeah? Not even, we're not approving anything at this Council? We are not approving any TVRs today if this bill goes anywhere today? We are not approving anything. What it is approving by my reading of the bill is that we are telling people they need to apply at Planning Commission.

Ms. Robeson: Well you're saying they need to apply if it's correct that it's not going to create any new ones then who's going to apply.

Ms. Kawahara: But who is it...

Ms. Robeson: But okay, so my interpretation is and I really hope I'm wrong. For example if I had a house and it was on a flood zone and I enclosed underneath, I would say okay I got a violation and I can't apply for a TVR permit by March well actually October 15, 2008 so therefore I don't have a TVR permit now but under this new bill it would open the door for me to come in to apply if I could prove that I had my TAT and my GET and I rented my place for you know x amount of days and I can prove that I got some income from it.

Ms. Kawahara: For how long?

Ms. Robeson: For how long? I think it's vague in the existing ordinance, is that what you're saying?

Ms. Kawahara: Yeah so there are rules about who applied in the previous one and if we have applications now right?

Ms. Robeson: I think this is opening the door to some additional TVRs.

Ms. Kawahara: Do you think that doing something is better than leaving it to do that?

Ms. Robeson: I don't think that it's going to diminish those numbers.

Ms. Kawahara: Absolutely you don't think it's going to diminish those numbers? You don't think it's going to put a stop? What happened in 2008 in March in this ordinance?

Ms. Robeson: The TVR non conforming use permits or certificates were supposed to have been issued by or actually March 7<sup>th</sup> was the date that the bill was signed in 2008. And March 31<sup>st</sup> 2009 the nonconforming use certificates were supposed to be issued by the Planning Department.

Ms. Kawahara: But they were supposed to have been operating prior to 2008?

Ms. Robeson: Prior to March 7<sup>th</sup> 2008, yes.

Ms. Kawahara: So nobody can open up new ones after March 9<sup>th</sup>?

Ms. Robeson: Maybe they didn't apply.

Ms. Kawahara: No I mean are we allowing anymore after March 9<sup>th</sup>?

Mr. Bynum: 7<sup>th</sup>.

Ms. Kawahara: March 9<sup>th</sup>, 2008? If anybody can they start one?

Ms. Robeson: They can't start one.

Ms. Kawahara: Right so we're not starting any new ones.

Ms. Robeson: But if they didn't apply because they had a violation...

Ms. Kawahara: But are we starting any new ones? I'm just really just voicing my frustration because and not at you I'm looking at that and it's disgusting.

Ms. Robeson: Okay, you will need to check further then.

Mr. Furfaro: Councilmember Kawahara, do you have any more questions?

Ms. Kawahara: I don't.

Mr. Furfaro: I would like to recognize Mr. Bynum.

Mr. Bynum: Barbara, thank you for your testimony and I do have some questions. I think you are correct that there certainly may be people who did not apply because of the way the bill was written and that couldn't apply now but they would have to demonstrate that they were operating prior to March 7<sup>th</sup> 2008.

Ms. Robeson: Right.

Mr. Bynum: So I think that's true both in the Residential District and in Ag District, that there may be additional applications that we haven't seen before so I wanted to say that. The question is because I know you said you've been expressing concerns about this since 98 and the Kobayashi opinion came out 99, so was that in response to the community's concerns at the time?

Ms. Robeson: One of the Council members at that time and I think it evolved from that yes. One of the Council members asked for an opinion from the County Attorney's office and that was the opinion.

Mr. Bynum: Because of that public concern already was generated because you saw the handwriting on the wall so to speak. If I understand your testimony correctly it's like it wasn't just now just Kama'iana families who had this property in the family that were renting it and staying in it and alternating. There was this new thing happening that people were coming and purchasing properties with the intent to vacation rental and that certainly was part of this story that people came and said wow Hā'ena is so awesome it's so great and maybe they are just somebody that stopped into the local real estate agent and they say, how much are these properties on the ocean over here? Oh that much, I couldn't afford that and the real estate agent says well maybe you could, maybe you could because you can do this (make money). I have met a lot of people and a lot of them are fine people that are now full time residents of Kaua'i that did that. They came and they bought this unit and stayed in it month to year, they vacation rental it

and they hired local people to manage it for them then maybe they started staying three months and some of those that are not and don't have permits now have full time residents. It's very interesting how that progressed but it was clear to the community on the North Shore in 1998 that this was a problem, is that correct?

Ms. Robeson: That is correct because you know we used to be and we have been identified through the north shore plan, the general plan, etc... we were supposed to be a rural area.

Mr. Bynum: Right.

Mr. Robeson: And we were not a visitor destination area and obviously it's a little different now.

Mr. Bynum: I think Barbara since I've been paying attention to the Council and been on it, you have told that story really well as the chair dramatically when we discussed this original and what the problem statement was and the general plan addressed it and asked the County and that Kobayashi opinion and the part that nobody says is, he says the law says that the way it's defined now it's multifamily not single family and so Council if that was your intent it be prudent to address that issue legislatively right, or some language to that effect. As Council member Kawahara said it took eight years and during that eight years and even during the time that I was on the Council when we were debating this, during the ten months that we debated it I don't know that we can get this but my guess is that they were a lot of people that were creating vacation rentals during that period. My sense during that whole time was, what are we waiting for and I'm going to make some comments about why I'm going to introduce this bill and some amendments that I'm introducing today to try to address certainly not all of your concerns but at least the ones that I think we can. I wanted to get that sense from you that this was identified clearly as a community problem as early as 1998?

Ms. Robeson: Yes.

Mr. Bynum: Okay, thank you.

Mr. Furfaro: Yes.

Ms. Kawahara: I just want a point of personal privilege. I just want to apologize, I'm a little tired and I didn't mean to take my frustrations out on you. We have a good relationship and I've known you since being a Librarian so it's definitely not you. All the information that you give us just bolsters my commitment to make sure we really address this issue because all of the things you submit to us show and what kind of impact there are when TVRs aren't taken care of and done something with. Thank you for that chair.

Mr. Furfaro: You're welcome. Anybody else have anything for Barbara at this time?

Mr. Asing: I just want to follow up on the question that was raised by Council member Kawahara when she talked about the numbers. I guess she asked you about the numbers and could it increase? And I think your answer is possibly could and your interpretation of the bill today is that in fact more than likely it will increase.

Ms. Robeson: Yes that's correct.



Mr. Asing: And that was confirmed by Council members Bynum assertion that he believes that the bill does exactly that? I just wanted to put that on the table to make sure that it was the answer that you got from Councilmember Bynum's, and you get the same answer from me and I will agree with that. So that answers the question that was asked by Council member Kawahara and that's clear.

Ms. Robeson: Thank you, Mr. Chair.

Mr. Asing: And just a general statement, everything that you've done here was done by myself, actually three years ago maybe?

Ms. Robeson: Yes.

Mr. Asing: So you're doing nothing more than confirming what was done prior. I just want to say thank you for the confirmation of the presentation made years earlier. Thank you and that's all I wanted to say.

Mr. Furfaro: Fine, thank you Chairman Asing. Barbara I just want to make sure that some of my answers touch on this. Under the general provisions dealing with forty six four, you are familiar with this section?

Ms. Robeson: Yes I am.

Mr. Furfaro: It indicates that neither this section nor any other ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for the trade, industrial, residential, agriculture, or other pursuits for which the building or premises is used at the time this section of the ordinance takes place and effective that it provided that a zoning ordinance may provide for the elimination or nonconforming use. The uses are discontinued, etc... etc... so basically we are reading from this and we tried to draw the line on the sand by saying... I guess I will use the word to protect the County from the fact that from eighteen years the State has been collecting checks from people for these uses and so forth and then they've been distributing a share to us and this seems to be a very challenging section for us and we're well aware of it. We are trying to draw a line in the sand, to do what was outlined in the general plan to prohibit it from growing. That's how I see it as to what we're trying to do here.

Ms. Robeson: I'm aware of forty six four and the existing ordinance talks about the list of compliance with State and County laws and ordinances, zoning, etc... Just to note that that section in this current proposed bill is removing that so that's another question about why that is being removed from the current bill in that section.

Mr. Furfaro: I understand your concern but I also don't think when we find those violations on those things that it doesn't prevent us from pursuing prosecution and so forth. I want to thank for bringing to our attention some of the violations for people that are continuing to operate that have not complied to even an application and we need to leave that in the hands of the administration for pursuing an unlawful violations.

Ms. Robeson: I hope they will.

Mr. Furfaro: I would be very supportive of any additional funding or contract services they may need to help them. The whole intent was to have people apply by...

Ms. Robeson: Well I hope the bill maybe then you could take a look at it and if possible amend it to strengthen the ability of the Administration to enforce the law.

Mr. Furfaro: If we can provide services for them, manpower, financing, I can concur with that but I want to get this line drawn in the sand, end of story. Now let's hope we can get some attrition accordingly. Barbara thank you for your work and again these are my responses to your questions.

Ms. Robeson: I might have additional comments next time.

Mr. Furfaro: Thank you. Go ahead.

Mr. Bynum: May I?

Mr. Furfaro: Yes.

Mr. Bynum: I mean I certainly want to answer that question and I didn't know if I should do it now or... Why is that provision taken out of there? To answer that is because of forty six four and because of a provision and the notes for forty six four if you look in this book. It says, "The term lawfully used and previously lawful as used in this section and the land use ordinance refers to compliance with the previous zoning laws not building codes or other legal requirements that may be applicable to the construction or operation of a structure". That's the reason because Kaua'i law says "Lawful use can't include building code violation" and that section says if you have a building code violation you can't continue the use and that's the problem. That's one of the two problems that this bill intends to fix.

Ms. Robeson: Does that say zoning violations though? Or flood violations, or SMA violations?

Mr. Bynum: With previous.

Ms. Robeson: My recollection and I don't have it in front of me of course were building violations.

Mr. Bynum: Right.

Ms. Robeson: You clean up the building violation and you can get your non conforming use certificate.

Mr. Bynum: Right.

Mr. Robeson: Anyway that was just my comment.

Mr. Bynum: Right and I will address that when we introduce the bill.

Ms. Robeson: Okay, thank you.

Mr. Kaneshiro: Any further questions by committee members for Barbara or non committee members? Mr. Asing.

Mr. Asing: I don't really have a question but I have a response to a response by Councilmember Furfaro to Barbara on the statement of eighteen years of collecting general excise taxes. If that statement in itself does not carry any weight at all and the reason I say it does not carry any weight at all is in the State's opinion, the State has not allowed vacation rentals in the conservation district. Therefore I am saying that the collection of eighteen years is meaningless as far as the State is concerned. The treatment should be across the board and you can't say that the conservation district is different because there are four districts that are controlled by the State and the Ag happens to be one district. If you compare the Ag with the conservation they're in the same category or the same boat so you treat them the same way in my opinion. Thank you.

Mr. Furfaro: Barbara again once more and I do want to conclude that the Chair said in his opinion on the conservation and the Ag, I have some similarities but not all and I clearly see no commercial activity on conservation lands. It may be a little more fluid in those areas but your work is to be commended and I thank you very much.

Ms. Robeson: Thank you very much, as always.

Mr. Furfaro: Caren.

CAREN DIAMOND: Aloha, Caren Diamond. I think I will start off where Mr. Furfaro just left off at conservation. Since the last meeting nowadays on the County website, conservation listings have begun to appear again so that when the website and TVRs first started getting registered and listed there was a whole slew of conservation ones and then the conservation vacation rentals were pulled off the list obviously because it's State jurisdiction and not County. Now we see them appearing again and so I just want to note...

Mr. Furfaro: I will bring that to the attention of the County Attorney because that needs to be reviewed. I think that we're about eighteen that got notices from the State, especially in the far end of Hā'ena so we'll bring that to the attention of the County Attorney.

Ms. Diamond: Thank you. I'd like to draw attention to the map that's up there and I did bring the numbers. There was sixty-nine planning department approvals in the Wainiha area. There were twelve planning commission approvals so it was totaling eighty- one vacation rentals that were approved in Wainiha. In Hanalei there were eighty- six vacation rentals that were approved by the planning department and there were another twenty- six that were commission approved for a total of a hundred and twelve. I want to state when I did this, since I did this two times the planning commission had agenda items that did approve a bunch more vacation rentals that I hadn't added to the commission approved list. That makes it a hundred and ninety three vacation rentals in Wainiha and Hanalei and that's a huge amount. If you look at the special management area rules and regulations they talk about impact, accumulated impacts and what you see before you is a really heavy accumulated impact to the north shore. I was looking through the internet this week and I was looking for houses that are for sale that have vacation rental approvals and there's a huge amount of them, a huge amount. So this vacation rental problem is not that this is local families who are owning it, these are being bought and sold as businesses in our residential areas or what was residential areas. If you look at the zoning map, what the County did was put a big x across all of it and said oh so what people did that... will let them slide. It's bizarre and I want to read in my research there was an instant software blog that I happened to see and I'm just going to read the first sentence from it. It says, Nā Pali properties owned by Jane and Joe Abramo, boasts seventy five...

Mr. Furfaro:  
give you another three.

Excuse me Caren, that's three minutes and I will

Ms. Diamond: Thank you. Both seventy of the most sought after vacation rentals on the picturesque beaches of Kaua'i's north shore. That's one real estate agent, seventy five vacation rentals on our beaches that they are advertising. I'm seeing we have a huge impact and when you look at this bill I was really confused by some of the questions that I was listening to because of course it opens it up. It cuts all the requirements that were in there and people who could not comply before and who knew they could not comply before and people who couldn't pass inspections before now don't have to do any of that because there's nothing to comply with. The only one condition that is left is that you pay fifteen hundred bucks and you come in and you can reapply and that's it. So you have sold our neighborhood for a lot of fifteen hundred bucks but that's not really what zoning is about and that's not what communities are about and our community is really in trouble and what we're asking is instead of, I don't know what this bill is doing before you really but instead of gutting the existing bill I mean some of the questions were why did nobody do anything. You are the first Council here sitting here to do something and what you're doing is negating what the last council did. What the last council did what the last council did well it may have been a little bit late was okay. What wasn't okay was the implementation by the planning department and that was what we asked for over and over and over again. Can we please see what they used, but now we are being told no, no, no, that's it, these have to stay and more is going to come. I don't understand. Commercial uses need a permit and I don't think anyone of those have SMA permits, none of them. B&Bs need a permit and all commercial uses need a permit. When people applied for houses they applied for single family residence not for a horizontal hotel and a lot of the property there are brand new and it was open in our original maps and we mapped in 1999, we mapped again in 2004, we mapped again in 2008 and we mapped again just recently. A lot of what happened is the areas that were opened that did have no buildings on them whatsoever immediately built and made themselves vacation rentals. So when does it stop? It didn't stop with the last bill and when you gut this bill it's certainly going to increase more than stop. I would suggest rather than gutting the bill I would ask you to please make some amendments that deal with attrition of the increase to our neighborhood, that return our neighborhood. Whether it has to happen over time, whether you amortize this commercial use over time, whether you end it at the time of sale. I would ask you to please look into how you can do something so that we can have a neighborhood again and not a horizontal hotel in tsunami zone. Thank you.

Mr. Furfaro:  
like to testify?

Thank you Caren. Is there anybody else that would

JOANN YUKIMURA Chair Furfaro, Chair Asing, Members of the Council and Committee, JoAnn Yukimura for the record. A couple of housekeeping or small issues first on page two of the bill where you take out no interior lockouts and that's number six on page two. I want to say that when we drafted this bill that was a planning department recommendation that we put that in and that was to prevent multi unit hotels basically where a single family dwelling is used for three or four vacation rentals. I'm not sure why that's been taken out but it was a planning department recommendation. On page three I guess it is where under C 8-17.10C where you take out the entire requirement for compliance with County land use and planning laws. I am aware of the case law that says you know building and zoning violations perhaps, but I would really question whether that case law governs flood plain management and special management areas. County land use laws are in the planning level because I think some of these deals with health and safety and they shouldn't be trivialized and said unrelated to being legal because they really are major purpose laws. I mean just allowing people to dwell in the tidal area, flood area levels

is a major problem and I'm not sure that the case laws really applies to laws like that. I certainly don't think it applies to fraud and where people have claimed that their units are owner occupied and where they get a cap on their real property tax increase where they get a lower tax rate. I don't see how they can claim that they were owner occupied and in a home owner class and also being vacation rental. To me that's fraud on the County and there should be something explicit in these amendments to say that if that is the case, there's no way they could qualify as a legal vacation rental. It's totally contrary that one could be owner occupied and then also used as a vacation rental, that doesn't make any sense at all. Finally my biggest concern with this law is it is very contrary to my understanding of the frame work of the law regarding none conforming use. It's something in terms of Ag vacation rentals on Ag land. If you don't have an Ag permit at the time that you were operating, (and I will take six minutes)

Mr. Furfaro: Excuse me that's your three minutes and you may continue.

Ms. Yukimura: Your'e not legal at the point that the law was passed. I think you open yourself up to other people who didn't make the deadline saying well why can't I get an Ag use permit too. I mean because there's nothing that distinguishes us from those who are claiming to be nonconforming because they weren't legal either so really, nobody had to be legal. To me it's very complicating and extremely risky and then I want to say that the existing law does allow transient vacation rental use right now, if it's an accessory use as a guest house. I remember Ian Costa telling me that when we asked him that specific issue but never does our law allows a dwelling unit to be a vacation rental. Mr. Volker's point really opened my eyes because it's a violation of the agreement with the planning department. Farm dwelling use cannot be a vacation rental under the farm dwelling agreement, that should be enough for us to enforce all of these and just claim that they're not legal. I really feel like the people who are being violated are those who are not really on Ag land but its presently zoned Ag land and maybe when we do the IAL's they will turn out to be not important Ag land or maybe not Ag lands. Those are the ones that because of the lack of initiative from our planning department and all of us as a County. They might be able to be nonconforming use because they wouldn't be on Ag Land if we had done our planning in time and the real way to do that was a nonenforcement agreement and that was probably the only fair way to do it. I find it so ironic that so much resistance to allow farm worker housing but this bill that would allow dwelling units to be vacation rentals is being considered kind of doesn't make sense especially because it doesn't fit the issue of nonconforming use. This whole bill talks about that you have to be nonconforming and we can't apply a law retroactively but you have to be legal at the time of the law, well I'm sorry they aren't legal and they aren't legal until they get a permit. Any questions?

Mr. Furfaro: Are there any questions?

Mr. Asing: Yes I have a question JoAnn, I'm not exactly sure. Are you for passage of the bill or are you against passage of the bill?

Ms. Yukimura: I'm not in favor of it.

Mr. Asing: You're not in favor of the bill. Oh very good thank you. I thought I heard that and I wasn't sure but you answered the question, thank you.

Ms. Yukimura: It doesn't make legal sense to me.

Mr. Asing: Okay, thank you very much ,I appreciate it.

Mr. Furfaro: Thank you. Any other questions, no. Thank you  
JoAnn.

Ms. Kawahara: I do.

Mr. Furfaro: You have a question.

Ms. Kawahara: For Jo Ann.

Mr. Furfaro: I know it wasn't for me.

Ms. Kawahara: Thank you. I'm having problems with making legal sense also. What happens if everybody with this bill, they apply in front of the planning commission I mean if everybody that has a TVR says we are a farm dwelling, that's a use and that's allowed in 205 right?

Ms. Yukimura: No but the question is not what you call it, it's what it actually is based on its actual use which in dwelling means there's a farm or there's agriculture. So that would be the determination I would guess and it would go back and I'm sorry I'm not really familiar with the farm dwelling agreement but I think Mr. Volker read some of the language of it. I think the planning commission in some of the words they added to it and were saying that it had to show farming too.

Ms. Kawahara: I'm struggling with the same...

Ms. Yukimura: But we're struggling with that on the farm worker housing. What's a farm?

Ms. Kawahara: Exactly.

Ms. Yukimura: At least the farm worker housing bill has some criteria that we're still going to be struggling with but we're trying to get down to that multimillion dollar question as to what is a farm and what's real farming. My understanding was if it's a real farm like a farm where people pick up produce every week and it's a commercial venture and it's providing food not just for the householders but for the broader community and they have a guest house, that's a vacation rental. I believe Mr. Costa said that was okay and that's been okay for years under our laws because you have a real farm and then you have an accessory use which is not a dwelling unit, a guest house is not a dwelling unit. That was one way of doing it that I've been told our planning frame work allows but that's the only way I understand it.

Ms. Kawahara: So it kind of requires that we have a definition of farm yeah, in the State law?

Ms. Yukimura: Well that's been the question that everybody's been avoiding, it's been the elephant in the room with farm dwelling agreements.

Ms. Kawahara: Has the State given us any guidance in HRS on what is a farm?

Ms. Yukimura: No and we're not waiting for the State to give us guidance. We are actually grappling with the issue which we will have to address anyway with IAL lands, important Ag lands. That's going to come up no matter what because if there's a farm dwelling on any lands in the State, it should be on important Ag lands.

Ms. Kawahara: I totally agree and my problem is making legal sense out of it also and the cultivation... I think a decision has to be made and I don't know if we have the tools, I don't know that the State has given us the tools to make a good decision.

Ms. Yukimura: I think we're going to wait forever to wait for the State to give us the tools and so we need to determine ourselves and then offer our experience and our struggle with this issue to the State. Assuming we come to something that's a good working definition of farm, something that's going to preserve agriculture, preserve and promote agriculture on this Island. We go to the State and lobby for this and give some leadership to this or maybe work with the other Counties. To wait around is not true leadership in my opinion.

Ms. Kawahara: No it's not and I'm not waiting or I wouldn't wait around for the State either.

Mr. Furfaro: Do you have any more questions?

Ms. Kawahara: No thanks.

Mr. Furfaro: Are there any more questions for JoAnn by anybody? JoAnn, thank you very much.

Ms. Yukimura: Thank you.

Mr. Furfaro: Ann did you want to come up?

ANNE PUNOHU: Aloha, Anne Punohu. I'm going to do a three three split. I kind of agree with everybody who spoken so far and I want to thank Uncle Kaipo because Uncle Kaipo did such a great job at giving that whole demonstration and I remember when we got all upset and you gotta remember I'm from that area and I spent a portion of my life there and I saw all of this happen right in front of me and as somebody who is just that age group where all of us was kind of hanging out together, we just lived in the families houses, so we would be like a big school of fish and we would go like from the Fu's house, then we would go hang at the Maka's, then we go to Auntie Kapeka's, you know it would be a big group of us because there was no housing for us. I mean it's not we could go and have our own place or you know go somewhere else you know, we were just there and those were the houses that everybody lived in and you know we weren't like these guys that who could come here and build a big house and make themselves a five thousand dollar a month vacation rental. For me it was very upsetting and it took all of the potential land and housing away from our age group, so now all of the people that I kind of was raise with in my late teens, twenties and thirties, nobody lives there, everybody is gone, everybody is spread out somewhere else and now I see other people who get to have the land and have a nice house and on top of that they make thousands and thousands and thousands of dollars a month on other people that get to come and live there. I don't want to see that happen anymore. It was really painful to go through and watch and now nobody can live there except for these guys and they taking all the land, they taking everything. As far as taking out that lock out thing, that's a dumb idea, don't do that, and as far as somebody coming out there and making the inspection, I think that's good but I think there should be two people not one because somebody gotta watch the other guy and somebody gotta watch the other guy. I know I'm real cynical these days but envelopes can pass okay, you know what I mean. I can say that because I'm not sitting on the Council seat that's fun yeah, I can say whatever I like. I don't want to see the bill gutted, I want to see the original intent there. I don't think there should be any TVRs on Ag land outside of the VDA

anywhere on this Island and I will reserve my last three comments as to what is Ag because you guys, come on... Anyway, I will be back, aloha.

LORNA NISHIMITSU: Good afternoon, my name is Lorna Nishimitsu and I would like to clarify something. As I read the ordinance of the draft bill it doesn't propose to grandfather agricultural transient vacation rentals. It's not saying that agricultural transient vacation rentals are nonconforming. All it says is people who want to do an agricultural TVR have the rights to apply for a special permit at the planning commission level but one element you have to establish is as of March 7, 2008 you had to be in a TVR use. So we're not giving or you not going to confer any greater rights than they had back on March 7, 2008 to go to the planning commission and ask for a special permit. What you did on March 7, 2008 was eliminate or take away their right to apply for a special permit. All of the people that are fearful that this will open a flood gate of agricultural TVR operators are operating under a misconception. I think by and large the AG- TVR people who were in operation before you adopted ordinance No. 864, realized that you were not going to sanction any continued use under the terms that those uses had been continuing. They are willing to submit themselves and subject themselves to what will probably be a difficult costly and arduous process before the planning commission who will then get their projects and decide whether or not like in Mr. Volker's case whether the use is appropriate there or whether maybe it's appropriate somewhere else. Based on that Council members, we are asking and urging that you support bill 2364, thank you.

Mr. Furfaro: Thank you. Lorna let me see if anybody has any questions first. Are there any questions for Lorna? Mr. Chair, go ahead.

Mr. Asing: I don't have a question Lorna and I respect you as an attorney and representing your clients. I will tell you that I disagree with your statement and my reason for disagreeing with your statement is what I am saying, is I am saying that reason for not recognizing the vacation rentals on the State land is simply because it is different under the State law. In my opinion, you were not entitled to that in the first place so that where I'm coming from. I want to let you know that I respect your opinion and your reasoning but I will give you my reasoning. My reasoning is simply under the State law under Ag you were not entitled to that in the beginning. So that's where I'm coming from and I just want to let you know, but I understand what you're saying.

Ms. Nishimitsu: Thank you.

Mr. Furfaro: Thank you. Any other questions? Lorna, thank you very much. Is there anyone else that would like to testify? I'm going to then call... did you want to speak again?

ANNE PUNOHU: I like what Uncle Kaipo just said because he is right. It wasn't your privilege in the first place so that's that and I like what you said. I also do appreciate Lorna but you just hit it right on the nail right on the head Uncle. We have our privileges what we're allowed to do, what we're not allowed to do, but so often we see these people just do whatever they want to do and if they don't get their way they're going to sue or they're going to try and figure out a way to get around any single, every single solitary law that any of us have ever struggled through. They are going to get their way no matter what. If you're talking about drawing a line in the sand, I want to see you guys not only draw the line in the sand, I want to see you guys stand behind that line and stand with all of us that has said enough is enough. You didn't get to do it then and you don't get to do it now and the planning commission has been notorious for letting everybody go. I know people say that sometimes they have said no and sometimes is not good enough for me, you say no every time when you should say no, not once or twice and throw that up as a flag



saying we said no this time. Look what they just said yes to with that turf operation and if that's a farm over my da kine. The last thing I want to say about farming is look it up in the Webster's Dictionary; the Federal Government has a very clear determination as to what is farming, and like I said the last time and all the other times, if you guys don't know come ask me and I will tell you what it is, aloha.

Mr. Furfaro: Okay I'm going to give the last call for public testimony, then I'm going to call this meeting back to order. Okay this meeting is called back to order and I believe the testimony today and I just want to reassure a few people if they want to give me information about someone who might have a tax exemption dealing with owner occupied units and renting that units, please give me the details because I will be glad to follow up with the tax office because that shouldn't happen and those people should probably be prosecuted to the full extension of the law. To double claim an exemption while they're running a commercial operation, at this point today are there any possible further discussions about amendments?

Mr. Bynum: Yes sir I have an amendment if I can find it in this stack of papers.

Mr. Asing: I have a question on procedure and process  
Mr. Chairman? Is it the intent of the Chair to get the amendments out and defer it so that the general public can get an idea as to...

Mr. Furfaro: That's possible and I haven't actually looked at the amendments as of yet myself, so I don't know if I can fully execute the answer you want. I may in fact ask for some commentary from the County Attorney as well, but that's how I plan to run my committee right now.

Mr. Asing: Thank you. I appreciate that.

Mr. Furfaro: Are there any amendments?

Mr. Bynum: Do you want a motion to approve to put this on the floor?

Mr. Furfaro: Yes to put the amendments on the floor we need a motion?

Mr. Bynum: Move to approve.

Mr. Furfaro: Is there a second to approve?

Mr. Kaneshiro: We need to approve the main motion first, is that what we're doing?

Mr. Furfaro: Yes that's what we're doing right now.

Mr. Bynum: I need to approve the main...

Mr. Kaneshiro: For discussion purposes to get into the amendments, I second the main motion.

Councilmember Bynum moved for approval of Bill No. 2364, seconded by Councilmember Kaneshiro.

Mr. Furfaro: Thank you Mr. Kaneshiro. So we have a motion and a second on the table so now we can in fact entertain some amendments.

Mr. Bynum: Thank you. May I have the floor?

Mr. Furfaro: You have the floor.

Mr. Bynum: Thank you. Obviously from discussing this over the last four years this is a difficult and emotional issue like all of them we've had today. In this circumstance there's lots of opinions and not much clarity and I'm kind of proud that the County of Kaua'i brought clarity by finally saying on March 7, 2008 when the Mayor signed the bill that no new vacation rentals are allowed outside of the VDA in residential or Ag. I think that is clear and I'm glad that it is clear but the bill before us tries to do two things. One is to eliminate some provisions in the initial bill that caused for deny of permits contrary to what I believe the law allows. The other is on the Ag district...

Mr. Furfaro: Excuse me just for a moment Mr. Bynum, a little different from the housing piece where we just amended to circulate for discussion. I think what we also need is the amendment to recognize that there's some circulation. You actually need a motion to amend.

Mr. Bynum: That's the motion I'm going to make as soon as I...

Mr. Furfaro: Well before we start the dialog. We have to get the motion to amend.

Mr. Bynum: I move to amend as circulated.

Mr. Kaneshiro: Seconded.

Councilmember Bynum moved to amend the bill as shown in the floor amendment attached hereto, seconded by Councilmember Kaneshiro.

Mr. Furfaro: Thank you Mr. Kaneshiro. And I apologize for interrupting.

Mr. Bynum: Thank you. So we passed a law that said no more new vacation rentals finally, and nobody is trying to change that. However that law has resulted in confusion and denials of permits because of building code violations which I think was kind of an over reach and has created difficulties for the County. In addition to that on Agricultural land the bill said if you're on Ag you are illegal and so many people didn't even attempt to apply. This bill would give people the opportunity to apply for and have due process to determine whether their use on Agricultural land is legal. People were not allowed to have that due process so I think the bill is important. Hearing the testimony that came during the public hearing I met with a bunch of people and went over every word of the bill and as a result there are the amendments that are before us which mostly just bring some clarity. One of the concerns had to do with why did the bill take out the provision that required inspections and so the clarification of that the bill as written required the planning department to inspect every time there was a permit or a renewal. One of the amendments here says the planning department may physically inspect the single family transient vacation rental prior to a nonconforming use certificate being issued. So I wanted it to be clear that the planning department still can do a physical inspection. That's the most substantive change here other than another portion where it said the bill requires a renewal every year and this clarifies that the renewal is on the date

that the permit was originally given. There was a provision in the bill that said if you missed that renewal date you can then reapply. That provision was taken out in this amendment to say if you missed a renewal date, you missed a renewal date so you better not do that. The last thing in here is that the bill said upon reapplication the planning department may initiate re inspection and I wanted that to be upon renewal. Re application just happens, actually we took out the... so most of these are clarification amendments to the original bill. I will now entertain any questions.

Mr. Furfaro: So are there any questions for Mr. Bynum on what he has submitted here? I'm sorry I picked up on some of the narrative, is this introduced by you Mr. Bynum?

Mr. Bynum: Yes.

Mr. Furfaro: Okay I might have the wrong document. May we take a short... I was finding verbiage that was the same as yours but it was introduced by someone else. Are there two circulations going on?

Mr. Kaneshiro: May I have a moment to speak?

Mr. Furfaro: Oh yes go right ahead Mr. Kaneshiro.

Mr. Kaneshiro: Actually I also have one circulating that is very similar to Mr. Bynum's.

Mr. Furfaro: Okay.

Mr. Kaneshiro: But I have not put it on the record since we haven't gone to my amendment and I prefer that we first talk about Mr. Bynum's amendment and if mine could also be put on the agenda.

Mr. Furfaro: Okay could we just take a short recess so I got because I was reading and there's a lot of similarities but a little different and I don't seem to have yours in front of me, that's the problem here. We're going to take a five minute recess.

There being no objections, the Committee recessed at 5:35p.m.

The Committee reconvened at 5:56p.m., and proceeded as follows:

Mr. Furfaro: This Planning Committee is back in session and we have introduced amendment from Mr. Bynum of which he went through the highlights and I would like to say that I'm going to make note that this is out in the public and being circulated but I'm going to ask for a two week deferral on this item. At the same time I'm going to ask the Chair if I can request for a session with the County Attorney next week in your committee dealing with some questions I have regarding property rights. So that is kind of where I'm at as Chairman after having some discussion with our Analyst, Legal Analyst and our County Attorney.

Mr. Bynum: Do you want a motion?

Mr. Furfaro: Yes and before we get to that motion, are you clear Lani on what I'm wanting to do?

Ms. Kawahara:

Yeah I know.

Mr. Furfaro: Okay you were being cold okay so I would like a motion and I will be asking the County Attorney to submit some comments regarding my question about property rights. Mr. Bynum?

Mr. Bynum:

I move to defer.

Mr. Furfaro:

Thank you very much, may I have a second?

Mr. Kaneshiro:

I second the motion on that.

Mr. Furfaro:  
please signify by saying "aye"

This is a deferral for two weeks. All those in favor

Committee Members:

Aye.

Upon motion duly made by Councilmember Bynum, seconded by Councilmember Kaneshiro, and unanimously carried, Bill No. 2364 was deferred.

There being no further business, this meeting was adjourned at 5:59p.m.

Respectfully submitted,

  
Laurie Chow  
Senior Clerk Typist

APPROVED at the Committee Meeting Held on August 4, 2010

  
JAY FURFARO  
Chair, Planning Committee